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code of federal regulations

Public Welfare

item# 572-c

ORIGINAL

COMPLETED

45

PART 1200 TO END
Revised as of October 1, 1981

022-003-94677-2

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code of federal regulations

Public Welfare

45

PART 1200 TO END

Revised as of October 1, 1981

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1201.735-101

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR 51.4.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1981.

THIS TITLE

Title 45—Public Welfare is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1-199, 200-499, 500-1199, and 1200 to end. These volumes represent all current regulations codified under this title of the CFR as of October 1, 1981.

Those amendments to Part 801—Voting Rights Program, Appendixes A, B, and D, which apply to Texas also appear in Spanish following Appendix D.

For this volume Mildred L. Isler was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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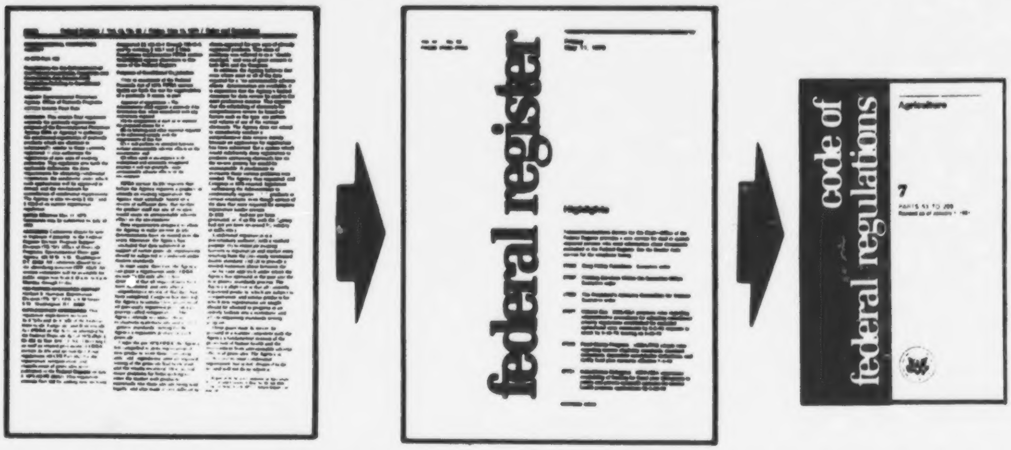

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Title 45—Public Welfare

(This book contains Part 1200 to End)

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Part

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CROSS REFERENCE: Community Services Administration Procurement Regulation, 41 CFR Chapter 22, Subtitle A.

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PART 1201—STANDARDS OF CONDUCT

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1201.735-102 Definitions.

Subpart B—General Conduct and Responsibilities of Employees

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1201.735-401 Submission of statements.
1201.735-402 Review of statements.

Authority: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1964-1965, Supp., p. 306, 5 CFR 735.104.

Source: 43 FR 46022, Oct. 5, 1978, unless otherwise noted.

Subpart A—General

§ 1201.735-101 Introduction.

(a) Executive Order No. 11222 directs the Civil Service Commission to require each agency head to review and reissue his or her agency's regulations regarding the ethical conduct and other responsibilities of all its employees. One of the main purposes of the regulations in this part is to encourage individuals faced with questions involving subjective judgment to seek counsel and guidance. The general counsel is designated to be the counselor for ACTION with respect to these matters. Associate and assistant general counsels are designated to be deputy counselors. They will provide authoritative advice and guidance in this area to any ACTION employee who seeks it.

(b) The ACTION Committee on Conflict of Interests will review and monitor the agency's policies and procedures on conflict of interests. The committee shall consist of the general counsel, the Assistant Director of Administration and Finance, the Assistant Director of the Office of Compliance, the Director of Contracts and Grants Management Division, a Deputy Associate Director of Domestic Operations, a Deputy Associate Director for International Operations, a Deputy Assistant Director for the Office of Policy and Planning, and the Director's designee, who shall be a nonvoting member. The committee shall have the authority to:

(1) Adopt the procedures necessary to insure the implementation of and compliance with the conflict of interest regulations found at §§ 1201.735-301 through 1201.735-305.

(2) Issue interpretive opinions or clarifying statements on actual or hypothetical situations involving the provisions of §§ 1201.735-301 through 1201.735-305.

(3) Accept and review reports filed under § 1201.735-302(b).

(4) Grant specific relief from the provisions of §§ 1201.735-303 through 1201.735-305 by a majority vote of the committee, if, after due consideration, the committee finds that:

(i) No actual conflict of interest exists, and

(ii) The purpose of the rule would not be served by its strict application, and

(iii) A substantial inequity would otherwise occur. In each such case the committee shall issue a written decision setting forth its findings as required above. The committee may make any exception subject to such conditions and restrictions as it deems appropriate.

(c) Any violation of the regulations in this part may be cause for disciplinary action. Violation of those provisions of the regulations in this part which reflect legal prohibitions may also entail penalties provided by law.

(d) This part applies to all employees of ACTION. "Employee" as used in this part includes regular employees, Presidential appointees, "special Government employees," experts, and consultants whether employed on a full-time or intermittent basis.

§ 1201.735-102 Definitions.

(a) "Special Government employee" as used herein means a person appointed or employed to perform temporary duties for ACTION with or without compensation, on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 days.

(b) "Regular Government employee" as used herein means any officer or employee other than a special Government employee.

(c) "Organization" as used herein includes profit and nonprofit corporations, associations, partnerships, trusts, sole proprietorships, foundations, and State and local government units.

(d) "Grantee" as used herein means any organization that receives financial assistance from ACTION including the assignment of volunteers.

(e) "Potential Grantee or Contractor" means any organization that has submitted a proposal, application, or otherwise indicated in writing its intent to apply for or seek a specific grant or contract.

(f) "Associated with" means:

(1) That the person is a director of the organization or is a member of a board or committee which exercises a recommending or supervisory function in connection with an ACTION project;

(2) That the person or his or her spouse, minor child or other member of his or her immediate household, serves as an employee, officer, owner, trustee, partner, consultant, or paid adviser (general membership in an organization is not included within the definition of "associated with");

(3) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively, 1 percent or more of the voting shares of an organization;

(4) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively, either beneficially or as trustee, a financial interest in an organization through stock, stock options, bonds, or other securities, or obligations, valued at $50,000 or more; or

(5) That a person has a continuing financial interest in an organization, such as a bona fide pension plan, valued at $5,000 or more, through an arrangement resulting from prior employment or business or professional association.

The term "associated" does not include an indirect interest, such as ownership of shares in a mutual fund, bank or insurance company, which in turn owns an interest in an organization which has, or is seeking or under consideration for a grant or contract. Such and "indirect" interest, as well as financial interests of amounts less than those stated in paragraphs (3) through (5) of paragraph (f) of this section, are hereby determined pursuant to 18 U.S.C. 208(b)(2) to be too remote to affect the integrity of the employee's services.

Subpart B—Conduct and Responsibilities of Employees

§ 1201.735-201 Proscribed actions—Executive Order 11222.

As provided by the President in Executive Order No. 11222, whether specifically prohibited by law or in the regulations in this part, no U.S. regular or special Government employees shall take any action which might result in, or create the appearance of:

(a) Using public office or employment for private gain, whether for themselves or for another person, particularly one with whom they have family, business, or financial ties.

(b) Giving preferential treatment to any person.

(c) Impeding Government efficiency or economy.

(d) Losing complete independence or impartiality.

(e) Making a Government decision outside official channels.

(f) Affecting adversely the confidence of the public in the integrity of the Government.

(g) Using Government office or employment to coerce a person to provide financial benefit to themselves or to other persons, particularly anyone with whom they have family, business or financial ties.

§ 1201.735-202 General conduct prejudicial to the Government.

An employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct prejudicial to the Government (5 CFR 735.209).

§ 1201.735-203 Criminal statutory prohibitions—Conflict of interest.

(a) *Regular Government employees.* Regular employees of the Government are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of their official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies to both paid and unpaid representation of another (18 U.S.C. 205).

(2) They may not, after Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(3) They may not for 1 year after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restraint described in paragraph (a)(3) of this section if the matter is one in which the employee participated personally and substantially (18 U.S.C. 207).

(4) They may not receive any salary, or supplementation of their Government salary, from a private source as compensation for services to the Government (18 U.S.C. 209).

(b) *Special Government employees.* Special Government employees are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which they have at any time participated personally and substantially for the Government (18 U.S.C. 205).

(2) They may not, except in the discharge of official duties, represent anyone else in a matter pending before the agency they serve unless they have served there no more than 60 days during the past 365. They are bound by this restraint despite the fact that the matter is not one in which they have ever participated personally and substantially (18 U.S.C. 205). (See § 1201.735-303(b) for additional nonstatutory Agency restrictions on a special employee representing any other person or organization in a matter pending before the Agency.) The restrictions described in paragraphs (b)(1) and (2) of this section apply to both paid and unpaid representation of another.

(3) They may not participate in their governmental capacity in any matter in which they, their spouse, minor child, outside business associate, or persons with whom they are negotiating for employment have a financial interest (18 U.S.C. 208).

(4) They may not, after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(5) They may not, for 1 year after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restriction described in paragraph (b)(4) of this section if the matter is one in which they participated personally and substantially (18 U.S.C. 207).

Subpart C—Outside Employment Activities and Associations

§ 1201.735-301 In general.

(a) There is no general prohibition against ACTION employees holding outside employment, including teaching, lecturing, or writing. But no employee may engage in outside employment or associatons if they might result in a conflict or an appearance of conflict between the private interests of the employee and his or her official responsibility.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

(c) An employee shall not have a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his or her Government duties and responsibilities. Nor may an employee engage in, directly or indirectly, a financial transaction as a result of or primarily relying on information obtained through his or her Government employment.

§ 1201.735-302 Association with a potential grantee or contractor prior to ACTION employment.

(a) No employee, or any person subject to his or her supervision, may participate in the decision to award a grant or a contract to an organization with which that employee has been associated in the past 2 years. When an employee becomes aware that such an organization is under consideration for or has applied for a grant or a contract with the Agency, the employee shall notify his or her immediate supervisor in writing. The supervisor shall take whatever steps are necessary to exclude the employee from all aspects of the decision processes regarding the grant or contract.

(b) When the Director, Deputy Director, or an Associate or Assistant Director, becomes aware that an organization with which he or she has been associated in the past 2 years is under consideration for or has applied for a grant or contract with the Agency, he or she shall refrain from participating in the decision process and immediately notify the Assistant Director of the Office of Compliance, who shall select an independent third party, not in any way connected or associated with the concerned official. The third party shall participate in and review the decision process to the extent he or she deems necessary to insure objectivity and the absence of favoritism. Said third party shall preferably be a person experienced in the area of government contracts and grants. The third party shall file a report in writing with the Committee on Conflict of Interest stating his or her conclusions, observations, or objections, if any, to the decision process concerning the grant or contract, which document shall be attached to and become a part of the official file.

§ 1201.735-303 Association with ACTION grantee or contractor or potential grantee or contractor while an ACTION employee.

(a) No regular employee may be associated with any ACTION grantee, contractor, or potential grantee or contractor. Any organization that is associated with a regular employee shall be suspended from consideration as a grantee or contractor.

(b) No regular or special employee, except in his or her official capacity as an ACTION employee, shall either participate in any way on behalf of any orgainzation in the preparation or development of a grant or contract proposal involving ACTION or represent any other organization in a matter pending before ACTION. In the event that a regular or special employee participates while an employee of ACTION in any aspect of the development of a grant or contract proposal on behalf of an organization, or represents another organization in a matter pending before ACTION, that organization shall be suspended from consideration for the grant or contract.

(c) No regular or special employee who, prior to his or her employment at ACTION, participated in the development of a grant or contract proposal on behalf of another organization, shall participate as an ACTION employee, in any aspect of the decision process regarding that grant or contract, or, if the grant or contract is awarded, in any oversight or management capacity in relation to that grant or contract. In addition, any such grant or contract shall only be awarded through a competitive process. In the event a regular or special employee who participated in the development of the grant or contract proposal prior to being employed at ACTION does participate as an ACTION employee in the decision process for such grant or contract, the organization shall be suspended from consideration.

(d) If a special employee participates as an employee of ACTION in any aspect of the development of a proposal or project, whether or not such participation is minimal or substantial, any organization with which he or she is associated shall be suspended from consideration for the grant or contract.

(e) If an organization with which a special employee is associated submits a proposal for a grant or contract, and the special employee did not participate either as an employee of ACTION or an associate of the organization in any aspect of the project or proposal or the application therefor, the matter shall be referred to the Committee on Conflict of Interests for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employees's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the proposed grant or contract.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policy making or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed grant or contract.

(3) Whether awarding the grant or contract to the organization would result in the appearance of or the potential for a conflict of interest.

(4) The process to be used in awarding the grant or contract.

(f) If a special employee wishes to become or remain associated with an ACTION grantee or contractor while he or she is an employee of ACTION, subject to the restrictions (b) through (e) of § 1201.735-303, the matter shall be referred to the Committee on Conflict of Interests for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employee's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the grant or contract.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policymaking or supervision of other employees and the relationship of the postion with the organization to the work to be performed under the proposed grant or contract.

(3) Whether such a relationship would result in the appearance of or the potential for a conflict of interest.

(g) Any suspension involving proposed contracts under this rule shall be in accordance with procedures set forth in 41 CFR 1-1.600 et seq.

§ 1201.735-304 Employment after leaving ACTION.

(a) Employees may negotiate for prospective employment with non-Government organizations only when they have no duties as ACTION employees which could affect that organization's interest, or after they have disqualified themselves, on the written permission of their supervisor, from such duties.

(b) For 1 year after leaving ACTION, no regular or special employee may serve pursuant to a personal or nonpersonal services contract or accept employment with an ACTION grantee or contractor for a position in which he or she would be working in any activity supported in whole or in part by ACTION funds received under an ACTION program which was within the boundaries of the employee's official responsibility or in which he or she participated personally while employed at ACTION.

(c) If, within 1 year after leaving ACTION, an individual accepts employment in violation of this rule, ACTION will disallow the costs allocated under the grant or contract for that position. In addition, a letter describing the violation will be placed in the employee's personnel file.

§ 1201.735-305 Employment with ACTION grantee or contractor.

An employee of an ACTION grantee or contractor who is compensated directly or indirectly from ACTION funds will be ineligible to be compensated under any personal or nonpersonal services contract with this Agency which will result in the employee being paid twice for the same time or product.

§ 1201.735-306 Association with non-ACTION grantee or contractor while an ACTION employee.

(a) An employee shall not engage in outside employment which tends to impair the employee's mental or physical capacity to perform his or her official responsibility in an acceptable manner.

(b) *Teaching, lecturing, and writing*—(1) *Use of information.* An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his or her Government employment, except when that information has been or on request will be made available to the general public or when the agency head gives advance written authorization for the use of nonpublic information on the basis that the proposed use is in the public interest.

(2) *Compensation.* No employee may accept compensation or anything of value for any lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the ACTION programs or which draws substantially on official data or ideas which have not become part of the body of public information.

(3) *Clearance of publications.* No employee may submit for publication any writing, other than recruiting information, the contents of which are devoted to the ACTION programs or to any other matter which might be of official concern to the U.S. Government without in advance clearing the writing with the Office of Communications or regional communications specialists, as appropriate. Before clearing any such writing, the Office of Communications will consult with the appropriate ACTION office.

(c) *State and local government employment.* Regular employees may not hold office or engage in outside employment under a State or local government except with prior approval of the General Counsel, ACTION.

(d) All employees not required by § 1201.735-401 to report their outside employment and financial interests shall inform their supervisors of all outside employment they hold or accept.

§ 1201.735-307 Gifts, entertainment, and favors.

(a) *From donors dealing with ACTION.* (1) No regular or special employees may solicit or accept, directly or indirectly, for themselves, for any member of their family, or for any person with whom they have business or financial ties, any gift, gratuity, favor, entertainment, or loan or any other thing of value, from any individual or organization which:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with ACTION;

(ii) Has interests that may be substantially affected by the performance or nonperformance of the employee's official responsibility;

(iii) Is in any way attempting to affect the employee's exercise of his or her official responsibility; or

(iv) Conducts operations or activities that are regulated by ACTION.

(2) Paragraph (a)(1) of this section does not prohibit, even if the donor has dealings with ACTION:

(i) Acceptance of things of value from parents, children, or spouse if those relationships rather than the business of the donor is the motivating factor for the gift;

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of breakfast, luncheon, or dinner meeting or other meetings;

(iii) Solicitation and acceptance of loans from banks or other financial institutions to finance proper and usual activities of employees, such as home mortgage loans, solicited and accepted on customary terms;

(iv) Acceptance on behalf of minor dependents of fellowships, scholarships, or educational loans awarded on the basis of merit and/or need;

(v) Acceptance of awards for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(3) Regular or special employees need not return unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other things of nominal intrinsic value.

(b) *From other ACTION employees.* No employees in superior official positions may accept any gifts presented as contributions from employees receiving less salary than themselves. No employees shall solicit contributions from other employees for a gift to an employee in a superior official position, nor shall any employees make a donation as a gift to an employee in a superior official position. However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(c) *From foreign governments.* No regular employee may solicit or, without the consent of the Congress, receive any present, decoration, emolument, pecuniary favor, office, title, or any other gift from any foreign government. See 5 U.S.C. 7342; Executive Order 11320; and 22 CFR Part 3 (as added, 32 FR 6469).

(d) *Gifts to ACTION.* Gifts to the United States or to ACTION may be accepted in accordance with ACTION regulations.

(e) *Reimbursement for expenses.* Neither this section nor § 1201.735-310(a) precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part and for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits. Nor does it allow an employee to receive non-Government reimbursement of travel expenses for travel on official business under ACTION orders; but rather, such reimbursement, if any, should be made to ACTION and amounts received should be credited to its appropriation. If an employee receives accommodations, goods, or services in kind from a non-Government source, this item or items will be treated as a donation to ACTION and an appropriate reduction will be made in per diem or other travel expenses payable.

§ 1201.735-308 Economic and financial activities of employees abroad.

(a) *Prohibitions in any foreign country.* A U.S. citizen employee abroad is specifically prohibited from engaging in the activities listed below in any foreign country:

(1) Speculation in currency exchange;

(2) Transactions at exchange rates differing from local legally available rates, unless such transactions are duly authorized in advance by the agency;

(3) Sales to unauthorized persons (whether at cost or for a profit) of currency acquired at preferential rates through diplomatic or other restricted arrangements;

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch;

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control;

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments;

(7) Acting as an intermediary in the transfer of private funds from persons in one country to persons in another country, including the United States;

(8) Permitting use of one's official title in any private business transactions or in advertisements for business purposes.

(b) *Prohibitions in country of assignment.* (1) A U.S. citizen employee shall not transact or be interested in any business or engage for profit in any profession or undertake other gainful employment in any country or countries to which he or she is assigned or detailed in his or her own name or through the agency of any other person.

(2) A U.S. citizen employee shall not invest in real estate or mortgages on properties located in his or her country of assignment. The purchase of a house and land for personal occupancy is not considered a violation of this paragraph.

(3) A U.S. citizen employee shall not invest money in bonds, shares, or stocks of commercial concerns headquartered in his or her country of assignment or conducting a substantial portion of business in such country. Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail.

(4) A U.S. citizen employee shall not sell or dispose of personal property, including automobiles, at prices producing profits which result primarily from import privileges derived from his or her official status as an employee of the U.S. Government.

§ 1201.735-309 Information.

(a) Release of information to press.

(1) Regular or special employees shall not withhold information from the press or public unless that information is classified or administratively controlled (limited official use). All responses to requests for information from the press should be referred to the Office of Communications or regional communications officers as appropriate who will be responsible for all releases. Regular and special employees should be certain that information given to the press and public is accurate and complete.

(2) Any questions as to the classification or administrative control of information should be referred to the general counsel.

(3) No regular or special employee may record by electronic or other device any telephone or other conversation. No regular or special employee may listen in on any telephone conversation without the consent of all parties thereto.

(b) Disclosure and misuse of inside information. No employee may, directly or indirectly, disclose or use for his or her own benefit, or for the private benefit of another, inside information as described in paragraph (c) of this section. The use of such information by an employee is restricted to the proper performance of his or her official duties. The disclosure of such information is restricted to official ACTION channels unless disclosure is authorized by the Director, the Deputy Director, an Associate Director, or a Regional Director of

ACTION. In particular, no employee may:

(1) Engage in, directly or indirectly, a financial transaction as a result of or primarily relying on such information; or

(2) Publish any book or article, or deliver any speech or lecture, based on or using such information.

(c) Definition: The term "inside information" as used in this section means, generally, information obtained under Government authority which is not known by the general public and which could affect the rights or interests of the Government or of a non-Government organization or person. Such information includes information about ACTION operations or administration, and personnel which could influence someone's dealing with ACTION.

(d) This section is not intended to discourage the disclosure through proper channels of information which has been or should be made public, or which is by law to be made available to the public. Also, employees are encouraged to teach, lecture, and write, provided they do so in accordance with the provisions of this section and §§ 1201.735-301, and 1201.735-306.

§ 1201.735-310 Speeches; participation in conferences.

(a) *Fees and expenses.* (1) Although an employee may not accept a fee for his or her own use or benefit for making a speech, delivering a lecture, or participating in a discussion if the subject is ACTION or ACTION programs or if such services are part of the employee's official ACTION duties, the employee may suggest that the amount otherwise payable as a fee or honorarium be contributed to ACTION.

(2) When a meeting, discussion, etc., to which paragraph (a)(1) of this section refers takes place at a substantial distance from the employee's home he or she may accept reimbursement for the actual cost of transportation and necessary subsistence, or expenses, but in no case shall he or she receive any amount for personal benefit. Such reimbursements shall be reported by the employee to his or her immediate supervisors.

(3) An employee may accept fees for speeches, etc., dealing with subjects other than ACTION or ACTION programs when no official funds have been used in connection with his or her appearance and such activities do not interfere with the efficient performance of his or her duties.

(b) *Racial segregation.* No employee may participate for ACTION in conferences or speak for ACTION before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities or conferences, or from membership in the organization sponsoring the conference or meeting.

(1) When a request for ACTION speakers or participation is received under circumstances where segregation may be practiced, the Director of the Office of Communications shall make specific inquiry as to the practices of the organization before the request is filled.

(2) If the inviting organization shows a willingness to modify its practices for the occasion, ACTION will cooperate in such efforts.

(3) Exceptions to this paragraph may be made only by the Director, ACTION and in his or her discretion.

§ 1201.735-311 Partisan political activity.

(a) Prohibited activities: No employee may:

(1) Use his or her official authority or influence for the purpose of interfering with an election or affecting the result thereof; or

(2) Take any active part in partisan political management or in political campaigns, except as may be provided by or pursuant to statute 5 U.S.C. 7324.

(b) Intermittent employees: Persons employed on an irregular or occasional basis are subject to paragraph (a) of this section only while in active duty status and for the 24 hours of any day of actual employment.

(c) Excepted activities: Paragraph (a) of this section does not apply to:

(1) Nonpartisan campaigns and elections in which none of the candidates is to be nominated by or elected as representing a national or State politi-

cal party, such as most school board elections; or

(2) Political activities connected with questions of public interest which are not specifically identified with national or State political parties, such as constitutional amendments, referenda, and the like (5 U.S.C. 7326).

(d) Excepted communities: Paragraph (a) of this section does not apply to employees who are residents of certain communities. These communities, which have been designated by the Civil Service Commission (5 CFR 733.301), consist of a number of communities in suburban Washington, D.C., and a few communities elsewhere in which a majority of the voters are Government employees. Employees who are residents of the designated communities may be candidates for, or campaign for others who are candidates for, local office if they or the candidates for whom they are campaigning are running as independent candidates. An employee may hold local office only in accordance with §§ 1201.735-301 through 1201.735-306 relating to outside employment and associations.

(e) Special Government employees are subject to the statute for the 24 hours of each day on which they do any work for the Government.

(f) While regular employees may explain and support governmental programs that have been enacted into law, in exercising their official responsibilities they should not publicly support or oppose pending legislation, except in testimony required by the Congress.

(g) The Foreign Service Act generally prohibits any Foreign Service employee from: (1) Corresponding in regard to the public affairs of any foreign government, except with the proper officers of the United States; and (2) recommending any person for employment in any position of trust or profit under the government of the country to which he or she is detailed or assigned.

§ 1201.735-312 Use of Government property.

A regular or special employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government for other than officially approved activities. All employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to them. By law, penalty envelopes may be used only for official Government mail.

§ 1201.735-313 Indebtedness.

ACTION considers the indebtedness of its employees to be a matter of their own concern and will not function as a collection agency. Nevertheless, a regular or special employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, or one imposed by law such as Federal, State or local taxes, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of a dispute between an employee and an alleged creditor, this section does not require ACTION to determine the validity or amount of the disputed debt.

§ 1201.735-314 Gambling, betting, and lotteries.

A regular or special employee shall not participate, while on Government owned or leased property or while on duty for the Government in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 1201.735-315 Discrimination.

No regular or special employee may make inquiry concerning the race, political affiliation, or religious beliefs of any employee or applicant in connection with any personnel action and may not practice, threaten, or promise any action against or in favor of an employee or applicant for employment because or race, color, religion, sex, or national origin and in the competitive service on the basis of politics, marital status, or physical handicap.

§ 1201.735-316 Related statutes and regulations.

Each employee should be aware of the following related statutes and regulations:

(a) House Concurrent Resolution 175, 8th Congress, second session, 72A Stat. B12, the "Code of Ethics for Government Service."

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against accepting honorariums of more than $2,000 per speech, appearance or article or aggregating more than $25,000 in any calendar year (2 U.S.C. 441i).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provisions relating to the habitual use of toxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuses of a Government vehicle (31 U.S.C. 638(a) (c)).

(h) The prohibition against the misuses of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against: (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against gifts to employee's superiors and the acceptance thereof (Rev. Stat. 1784, 5 U.S.C. 113).

(q) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, which is specifically applicable to special Government employees as well as to regular employees.

(r) The prohibitions against: (1) Accepting gifts from foreign governments; (2) engaging in business abroad; (3) corresponding on the affairs of foreign governments; and (4) discrimination on political, racial, or religious grounds contained in sections 1002 through 1005 of the Foreign Service Act of 1946, as amended.

(s) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(t) The prohibition against appointing or advocating the appointment of a relative to a position within the Agency (5 U.S.C. 3110).

Subpart D—Procedures for Submission by Employees and Review of Statements of Employment and Financial Interests

§ 1201.735-401 Submission of statements.

(a) (1) Regulations of the Civil Service Commission (5 CFR Part 735) require ACTION to adopt regulations providing for the submission of statements of employment and financial interests from certain regular ACTION employees and all special ACTION employees.

(2) All special employees and those regular employees designated in paragraph (b) of this section shall complete statements of employment and financial interests and submit them to

the Office of General Counsel not later than 5 days after their entrance on duty. The Director of Personnel Management shall be responsible for supplying all new employees with the necessary forms either prior to or on the first day of their employment.

(3) The statement of employment and financial interests shall include information on organizations with which the employee was associated during the 2 years prior to his or her employment by ACTION, as well as information about current associations. Special employees shall also indicate to the best of their knowledge which organizations listed currently on their form have contracts with or grants from ACTION, or are applying for ACTION contracts or grants. If any information required to be included on the statement, including holdings placed in trust, is not known to an employee but is known to another person, he or she is required to request that other person to submit information on his or her behalf.

(4) Changes in or additions to the information contained in a regular or special employee's statement must be reported in a supplementary statement as of June 30 each year. The Director of Personnel Management shall be responsible for insuring that such supplementary statements are submitted by June 30. If there are no changes or additions, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a conflict of interest and a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or the conflict-of-interest provisions of this part.

(5) In the case of temporary summer employees hired at FSR-7 or equivalent and below to perform duties other than those of an expert or consultant, the reporting requirement will be waived. It may also be waived by the Director of Personnel Management with respect to other appointments, except as experts or consultants, upon a finding that the duties of the position held by the special Government employee are of a nature and at such a level of responsibility that the reporting of employment and financial interests is not necessary to protect the integrity of the Government.

(6) Regular or special employees are not required to submit in a statement of employment and financial interests or supplementary statements any information about their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For this purpose, any organizations, doing work involving or potentially involving grants of money from or contracts with the Government are considered business enterprises and are required to be included in a regular or special employee's statement of employment and financial interests.

(7) The statements of employment and financial interests and supplementary statements required are in addition, and not in substitution for or in designation of, any similar requirement imposed by law, order, or regulation. The submission of a statement of supplementary statement by an employee does not permit him or her or any other person to participate in a matter in which his or her or other persons' participation is prohibited by law, order, or regulations.

(8) A regular employee who believes that his or her position has been improperly included under ACTION regulations as one requiring the submission of a statement of employment and financial interests shall be given an opportunity for review through ACTION's grievance procedures to determine whether the position has been improperly included.

(b) Statements shall be submitted by the following employees:

(1) Office of the Director:

(i) Director.

(ii) Deputy Director.

(iii) Executive Officer.

(iv) Special Assistants to Director and Deputy.

(v) Executive Assistants to Director and Deputy.

(2) Office of Domestic and Anti-Poverty Operations:

(i) Associate Director.

(ii) Deputy Associate Directors.

(iii) Special Assistants to Associate Director and to Deputy Associate Directors.

(iv) Supervisory program specialists.

(v) Program specialists and analysts.

(vi) Regional Directors.

(vii) Deputy Regional Directors.

(viii) Regional training chiefs.

(ix) Regional staff members with contracting and disbursing authority.

(x) Regional program operations officers.

(xi) State program directors.

(xii) State program officers.

(xiii) Deputy Directors, VISTA, and OAVP.

(3) Office of Administration and Finance:

(i) Assistant Director.

(ii) Deputy Assistant Director.

(iii) Director, Management and Organization.

(iv) Director, Administrative Services.

(v) Chief, Paperwork and Management.

(vi) Chief, Transportation.

(vii) Chief, Communications and Property.

(viii) Director, Accounting Division.

(ix) Chief, Fiscal Services.

(x) Chief, Accounting Operations.

(xi) Cashier.

(xii) Director, Personnel Management.

(xiii) Deputy Director, Personnel Management.

(xiv) Director, Health Services.

(xv) Director, Contracts and Grants Management.

(xvi) Chief, Procurement Division.

(xvii) Contract specialists, negotiators, and administrators.

(xviii) Purchasing agents.

(xix) Chief, Grants Division.

(xx) Senior Grants Administrator.

(xxi) Grants Administrator.

(xxii) Director, Computer Services.

(xxiii) Director, Staff Training and Development.

(4) Office of Recruitment and Communications:

(i) Assistant Director.

(ii) Deputy Assistant Director.

(iii) Special Assistant to Assistant Director.

(iv) Director, Planning and Evaluation.

(v) Director, Recruitment Resources.

(vi) Director, Office of Communications.

(vii) Director, Public Affairs.

(viii) Director, Creative Services.

(5) Office of Voluntary Citizen Participation:

(i) Assistant Director.

(ii) Director program operations.

(iii) Director, International and Special Assistance.

(iv) Program specialists.

(v) Director, School Partnership program.

(6) Office of the General Counsel:

(i) General Counsel.

(ii) Deputy General Counsel.

(iii) Associate General Counsels.

(iv) Assistant General Counsels.

(7) Office of Policy and Planning:

(i) Assistant Director.

(ii) Deputy Assistant Director.

(iii) Special Projects Officer.

(iv) Director, Budget Division.

(v) Director, Policy Development.

(vi) Director, Evaluation.

(vii) Director, Planning.

(viii) Special Assistants to Assistant Director.

(ix) Program analysts.

(x) Policy development analysts.

(xi) Supervisory program specialists.

(xii) Evaluation specialists.

(8) Office of Legislative and Governmental Affairs:

(i) Assistant Director.

(9) Office of Compliance:

(i) Assistant Director.

(ii) Inspector General.

(iii) Auditors, inspectors, program operations analysts.

(iv) Director, Division of Equal Opportunity.

(10) Office of International Operations:

(i) Associate Director.

(ii) Deputy Associate Directors.

(iii) Director, Programing and Training.

(iv) Director, Multilateral and Special programs.

(v) Director, Special Services.

(vi) Director, Office of Management.

(vii) Director, Office of Peace Corps Volunteer Placement.

(viii) Regional Directors.

(ix) Country Directors and those overseas staff members to whom contracting or procurement authority has been duly delegated by the Country Director.

§ 1201.735-402 Review of statements.

(a) The Office of General Counsel shall review all statements and forward the names of all listed organizations to the Director of Contracts and Grants Management. In addition, if the information provided in the statement indicates on its face a real, apparent, or potential conflict of interest under § 1201.735-301 through 305 of these standards, the General Counsel will review the situation with the particular employee. If the General Counsel and the employee are unable to resolve the conflict to the General Counsel's satisfaction, or if the employee wishes to request an exception to any of the above enumerated rules, the case will be referred to the Committee on Conflict of Interests. The Committee is authorized to recommend appropriate remedial action to the Director, who is authorized to take such action as may include, but is not limited to, changing assigned duties, requiring the employee or special employee to divest himself of a conflicting interest, taking disciplinary action, or disqualifying or accepting the self-disqualification of the employe or special employee for a particular assignment.

(b) The Office of Contracts and Grants Management shall maintain a list of all the organizations with which employees are or have been associated, as well as a list of all current grantees of and contractors with the Agency. When names of organizations with which new employees are or have been associated are submitted to the Grants office, they shall be checked against the list of current grantees or contractors. Similarly, before any new grants or contracts are awarded, the names of the potential grantees and contractors will be checked against the master list of organizations with which employees are or have been associated. Any real, apparent, or potential conflicts which come to light as a result of these cross checks will be referred to the Office of General Counsel for review. The General Counsel will proceed as in paragraph (a) of this section, referring the matter to the Committee on Conflict of Interests if necessary.

(c) Whenever an organization submits a proposal or application or otherwise indicates in writing its intent to apply for or seek a specific grant or contract, ACTION shall immediately forward a copy of the Agency standards of conduct to that organization and shall note which particular rules apply to potential grantees and contractors.

(d) Whenever a regular or special employee terminates his or her employment with ACTION, the Office of Personnel Management shall provide that employee with a copy of the rule which restricts a person's employment for a period of 1 year after leaving ACTION. Personnel shall also notify the Office of General Counsel when an employee terminates. One year after the date of termination, General Counsel will instruct the Office of Grants and Management to remove from the master list any organizations with which the terminated employee was associated. Three years after the date of termination, General Counsel will destroy the statement of employment and financial interests.

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
1203.1 Purpose.
1203.2 Application of this part.
1203.3 Definitions.
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1203.5 Assurances required.
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1203.7 Conduct of investigations.
1203.8 Procedure for effecting compliance.
1203.9 Hearings.
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1203.12 Effect on other regulations, forms, and instructions.

Appendix A—Activities to Which This Part Applies

Appendix B—Programs to Which This Part Applies When a Primary Objective of the Federal Financial Assistance is to Provide Employment

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1.

SOURCE: 39 FR 27322, July 26, 1974, unless otherwise noted.

§ 1203.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as title VI), to the end that a person in the United States shall not, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under a program or activity receiving Federal financial assistance from ACTION.

§ 1203.2 Application of this part.

(a) This part applies to each program for which Federal financial assistance is authorized under a law administered by ACTION, including the federally assisted programs listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under a program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under a program before the effective date of this part, except when the assistance was subject to the title VI regulations of an agency whose responsibilities are now exercised by ACTION;

(3) Assistance to any individual who is the ultimate beneficiary under a program; or

(4) Employment practices, under a program, of an employer, employment agency, or labor organization, except to the extent described in § 1203.4(c).

The fact that a program is not listed in Appendix A to this part does not mean, if title VI is otherwise applicable, that the program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this part.

(b) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under that property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part extends to a facility located wholly or in part in that space.

§ 1203.3 Definitions.

Unless the context requires otherwise, in this part:

(a) "Applicant" means a person who submits an application, request, or plan required to be approved by ACTION, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means that application, request, or plan.

(b) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(c) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in the property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient; and

(5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) "Primary recipient" means a recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) "Program" includes a program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training or other services whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance are deemed to include a service, financial aid, or other benefits provided (1) with the aid of Federal financial assistance, (2) with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet the matching requirements or other conditions which must be met in order to receive the Federal financial assistance, or (3) in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) "Recipient" may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under a program.

(g) "Director" means the Director of ACTION or any person to whom he has delegated his authority in the matter concerned.

§ 1203.4 Discrimination prohibited.

(a) *General.* A person in the United States shall not, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, a program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under a program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin—

(i) Deny a person a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of a service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies an admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided a service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under a program or the class of persons to whom, or the situations in which, the services, financial aid, other benefits, or facilities will be provided under a program, or the class of persons to be afforded an opportunity to participate in a program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to

individuals of a particular race, color, or national origin.

(3) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(4)(i) In administering a program regarding which the recipient had previously discriminated against persons on the ground of race, color, or national origin, the recipient shall take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of prior discrimination a recipient in administering a program may take affirmative action to overcome the effect of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) When a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by ACTION which have as a primary objective the providing of employment include those set forth in Appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this part applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI of this part.

§ 1203.5 Assurances required.

(a) *General.* (1) An application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. ACTION shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose involving the provision of similar services or benefits. When no transfer of property of interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by ACTION to revert title to the property in the event of a breach of the covenant where, in the discretion of ACTION, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on property for the purposes for which the property was transferred, ACTION may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible ACTION official if the applicant establishes, to the satisfaction of the responsible ACTION official, that the practices in other agencies or parts or programs of the governmental unit will in no way affect: (1) Its practices in the program for which Federal financial assistance is sought, or (2) the beneficiaries of or participants in or persons affected by the program, or (3) full compliance with this part as respects the program.

(c) *Assurance from academic and other institutions.* (1) In the case of an application for Federal financial assistance by an academic institution, the assurance required by this section extends to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible ACTION official, that the practices in designated parts or programs of the

institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in the program. If the assistance sought is for the construction of a facility or part of a facility, the assurance shall extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A to this part) shall as a condition to its approval and the extension of Federal financial assistance pursuant to the application: (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with the requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for methods of administration for the program as are found by ACTION to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under the program will comply with the requirements imposed by or pursuant to this part.

§ 1203.6 Compliance information.

(a) *Cooperation and assistance.* ACTION, to the fullest extent practicable, shall seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep records and submit to ACTION timely, complete, and accurate compliance reports at the times, and in the form and containing the information ACTION may determine necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of a program under which a primary recipient extends Federal financial assistance to other recipients, the other recipients shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for ACTION racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by ACTION during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. When information required of a recipient is in the exclusive possession of an other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this part and its applicability to the program under which the recipient received Federal financial assistance, and make this information available to them in the manner, as ACTION finds necessary, to apprise the persons of the protections against discrimination assured them by title VI and this part.

§ 1203.7 Conduct of investigations.

(a) *Periodic compliance reviews.* ACTION may from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with ACTION a written complaint. A complaint shall be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by ACTION.

(c) *Investigations.* ACTION will make a prompt investigation whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with this part. The investigation will include, when appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, ACTION will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in § 1203.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, ACTION will so inform, in writing, the recipient and the complainant, if any.

(e) *Intimidatory or retaliatory acts prohibited.* A recipient or other person shall not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by section 601 of title VI of this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential, except to the extent necessary to carry out the purposes of this part, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder.

§ 1203.8 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by other means authorized by law.

(2) Other means may include, but are not limited to, (i) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under a law of the United States (including other titles of the Civil Rights Act of 1964) or an assurance or other contractual undertaking, and (ii) an applicable proceeding under State or local law.

(b) *Noncompliance with § 1203.5.* If an applicant fails or refuses to furnish an assurance required under § 1203.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. ACTION shall not be required to provide assistance in that case during the pendency of the administrative proceedings under this paragraph. Subject, however, to § 1203.12, ACTION shall continue assistance during the pendency of the proceedings where the assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* An order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall not become effective until—

(1) ACTION has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by informal voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Director pursuant to § 1203.10(e); and

(4) The expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for the action.

An action to suspend or terminate or refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been so found.

(d) *Other means authorized by law.* An action to effect compliance with title VI by other means authorized by law shall not be taken by ACTION until—

(1) ACTION has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of a notice to the recipient or person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take corrective action as may be appropriate.

§ 1203.9 Hearings.

(a) *Opportunity for hearing.* When an opportunity for a hearing is required by § 1203.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of notice within which the applicant or recipient may request of ACTION that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is deemed to be a waiver of the right to a hearing under section 602 of title VI and § 1203.8(c) and consent to the making of a decision on the basis of the information available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of ACTION in Washington, D.C., at a time fixed by ACTION unless it determines that the convenience of the applicant or recipient or of ACTION requires that another place be selected. Hearings shall be held before the Director, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and ACTION have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and an administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with the rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both ACTION and the applicant or recipient are entitled to introduce relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Documents and other evidence offered or taken for

the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. Decisions shall be based on the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI, ACTION may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this part. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with § 1203.10.

§ 1203.10 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Director for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Director his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Director may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. On the filing of the exceptions or of notice of review, the Director shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision, subject to paragraph (e) of this section, shall constitute the final decision of the Director.

(b) *Decisions on record or review by the Director.* When a record is certified to the Director for decision or the Director reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or when the Director conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Director will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to § 1203.9, a decision shall be made by ACTION on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Director shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by ACTION.* A final decision by an official of ACTION other than by the Director, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or title VI, shall promptly be transmitted to the Director, who may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of title VI and this part, including provisions designed to assure that Federal financial assistance will not thereafter be extended under the programs to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies ACTION that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) An applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request ACTION to restore fully its eligibility to receive Federal financial assistance. A request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If ACTION determines that those requirements have been satisfied, it shall restore the eligibility.

(3) If ACTION denies a request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes ACTION is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by ACTION. The applicant or recipient shall be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section remain in effect.

§ 1203.11 Judicial review.

Action taken pursuant to section 602 of title VI is subject to judicial review as provided in section 603 of title VI.

§ 1203.12 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this part by ACTION which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin under a program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the requirements, are superseded to the extent that discrimination is prohibited by this part, except that nothing in this part relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this part. This part does not supersede any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued there under or (2) any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* ACTION shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies, and for which it is responsible.

(c) *Supervision and coordination.* ACTION may from time to time assign to officials of ACTION, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI and this part (other than responsibilities for final decision as provided in § 1203.10), including the achievement of effective coordination and maximum uniformity within ACTION and within the executive branch in the application of title VI and this part to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by ACTION.

Appendix A—Programs to Which This Part Applies

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

Appendix B—Programs to Which This Part Applies When a Primary Objective of the Federal Financial Assistance Is to Provide Employment

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).

2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

PART 1204—OFFICIAL SEAL

Sec.
1204.1 Authority.
1204.2 Description.
1204.3 Custody and authorization to affix.

Authority: Pub. L. 93-113, 87 Stat. 407 (5 U.S.C. 5101).

Source: 38 FR 34118, Dec. 11, 1973, unless otherwise noted.

§ 1204.1 Authority.

Pursuant to section 402.(9). of Pub. L. 91-113 the ACTION official seal and design thereof which accompanies and is made part of this document, is hereby adopted, approved, and judicially noticed.

§ 1204.2 Description.

The official seal of ACTION is described as follows:

(a) Within an outer circle of gold;

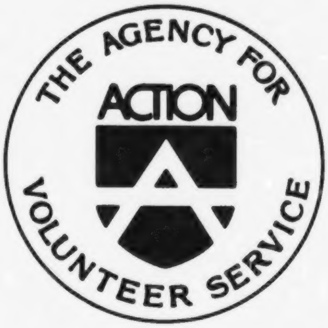
(b) A stylized shield with horizontal bars of (from top down) red, white, and blue on a white field appears in the center;

(c) A white capital letter "A" symbolizing voluntary action runs through the red, white, and blue shield.

(d) The logotype word "ACTION" appears in red in abutted capital letters above the shield.

(e) Enclosing the shield and "ACTION" is a ring of type in black capital letters spelling the words "THE AGENCY FOR VOLUNTEER SERVICE."

The official seal of ACTION is modified when reproduced in black and white and when embossed, as it appears below.



§ 1204.3 Custody and authorization to affix.

(a) The seal is the official emblem of ACTION and its use is therefore permitted only as provided in this part.

(b) The seal shall be kept in the custody of the General Counsel, or any other person he authorizes, and should be affixed by him, the Director or the Deputy Director to all commissions of officials of ACTION, and used to authenticate records of ACTION and for other official purposes. The General Counsel may redelegate and authorize redelegations of, this authority.

(c) The Director shall designate and prescribe by internal written delegations and policies the use of the seal for other publication and display purposes and those ACTION officials authorized to affix the seal for these purposes.

(d) Use by any person or organization outside of the Agency may be made only with the Agency's prior written approval. Such request must be made in writing to the General Counsel.

PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING

Subpart A—Suspension and Termination of Assistance

Sec.
1206.1-1 Purpose and scope.
1206.1-2 Application of this part.
1206.1-3 Definitions.
1206.1-4 Suspension.
1206.1-5 Termination.
1206.1-6 Time and place of termination hearings.
1206.1-7 Termination hearing procedures.
1206.1-8 Decisions and notices regarding termination.
1206.1-9 Right to counsel; travel expenses.
1206.1-10 Modification of procedures by consent.
1206.1-11 Other remedies.

Subpart B—Denial of Application for Refunding

1206.2-1 Applicability of this subpart.
1206.2-2 Purpose.
1206.2-3 Definitions.
1206.2-4 Procedures.
1206.2-5 Right to counsel.

AUTHORITY: Secs. 402(12), 412 and 420 of Pub. L. 93-113, 87 Stat. 394, 411 and 414.

SOURCE: 39 FR 1996, Jan. 16, 1974, unless otherwise noted.

Subpart A—Suspension and Termination of Assistance

§ 1206.1-1 Purpose and scope.

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance provided by ACTION pursuant to various sections of titles I, II and III of the Domestic Volunteer Service Act of 1973, 87 Stat. 394, Pub. L. 93-113, (hereinafter the Act) because of a material failure of a recipient to comply with the terms and conditions of any grant or contract providing assistance under these sections of the Act, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

(b) However, this subpart shall not apply to any administrative action of the ACTION Agency based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964 and sections 417 (a) and (b) of Pub. L. 93-113 relating to nondiscrimination. In the case of any such violation or alleged violation other provisions of this chapter shall apply.

§ 1206.1-2 Application of this part.

This subpart applies to programs authorized under titles I, II, and III of the Act.

§ 1206.1-3 Definitions.

As used in this subpart—

(a) The terms "ACTION" or "ACTION Agency" include each Regional Office.

(b) The term "Director" means the Director of the ACTION Agency.

(c) The term "responsible ACTION official" means the Director and Deputy Director of ACTION, appropriate Regional Director and any ACTION headquarters or regional office official who is authorized to make the grant of assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1-4, the term "responsible ACTION official" shall also include a designee of an ACTION official who is authorized to make the grant of assistance in question.

(d) The term "assistance" means assistance under titles I, II and III of the Act in the form of grants or contracts involving Federal funds for the administration of which ACTION has primary responsibility.

(e) The term "recipient" means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title I, II, or III of the Act, but does not include individuals who ultimately receive benefits under any program of assistance or volunteers participating in any program.

(f) The term "agency" means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out of the development, conduct and administration of all or part of a project assisted under titles I, II and III.

(g) The term "party" in the case of a termination hearing means ACTION, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of assistance to the recipient pursuant to § 1206.1-5(e).

(h) The term "termination" means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

(i) The term "suspension" means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

§ 1206.1-4 Suspension.

(a) *General.* The responsible ACTION official may suspend assistance to a recipient in whole or in part for a material failure or threatened material failure to comply with any requirement stated in § 1206.1-1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases, where the responsible ACTION official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice of intent to suspend as hereinafter provided.

(2) The responsible ACTION official shall notify the recipient by letter or by telegram that ACTION intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible ACTION official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible ACTION official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible ACTION official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible ACTION official shall fix a time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by ACTION.

(4) In lieu of the provisions of paragraph (b)(3) of this section dealing with the right of the recipient to request an informal meeting, the responsible ACTION official may on his own initiative establish a time and place for such a meeting and notify the recipient in writing or by telegram. However, in no event shall such a meeting be scheduled less than seven days after the notice of intent to suspend assistance is sent to the recipient.

(5) The responsible ACTION official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient in writing or by telegram of any such extension.

(6) At the time the responsible ACTION official sends the notification referred to in paragraphs (b) (2), (3), and (4) of this section to the recipient, he shall also send a copy of it to any agency whose activities or failures to act have substantially contributed to the proposed suspension, and shall inform such agency that it is entitled to submit written material or to participate in the informal meeting referred to in paragraphs (b) (3) and (4) of this section. In addition the responsible ACTION official may in his discretion give such notice to any other agency.

(7) Within 3 days of receipt of the notice referred to in paragraphs (b) (2), (3), and (4) of this section, the recipient shall send a copy of such notice and a copy of these regulations to all agencies which would be financially affected by the proposed suspension action. Any agency that wishes to submit written material may do so within the time stated in the notice. Any agency that wishes to participate in the informal meeting with the responsible ACTION official contemplated herein may request permission to do so from the responsible ACTION official, who may in his discretion grant or deny such permission. In acting upon any such request from an agency, the responsible ACTION official shall take into account the effect of the proposed suspension on the particular agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible ACTION official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(9) The responsible ACTION official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (b) (3) and (4) of this section as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible ACTION official concludes the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1206.1–5, or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible ACTION official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to an agency.

NOTE: Willful misapplication of funds may violate Federal criminal statutes.

(12) The responsible ACTION official may in his discretion modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the recipient had adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible ACTION official be reimposed with or without further

proceedings: *Provided however,* That the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1-5 or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible ACTION official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of (i) substantial injury to or loss of project funds or property, or (ii) violation of a Federal, State or local criminal statute, or (iii) violation of section 403 of Pub. L. 93-113 or of ACTION rules, regulations, guidelines and instructions, published in accordance with Section 420 of Pub. L. 93-113, implementing this section of the Act, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to an agency. (See note under paragraph (b)(11) of this section.)

(3) In the notice of summary suspension the responsible ACTION official shall advise the recipient that it may request ACTION to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible ACTION official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this subparagraph, the responsible ACTION official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible ACTION official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraph (b) (6), (7), and (8) of this section. Agencies may submit written material to the responsible ACTION official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraph (b) (6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1-5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the re-

cipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in paragraph (c)(3) of this section. If the responsible ACTION official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible ACTION official may continue the suspension in effect for an additional 7 days: *Provided however*, That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

§ 1206.1-5 Termination.

(a) If the responsible ACTION official believes that an alleged failure to comply with any requirement stated in § 1206.1-1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with § 1206.1-6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§ 1206.1-7 and 1206.1-8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by ACTION. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in § 1206.1-1. In any termination hearing, ACTION shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in § 1206.1-1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests ACTION to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all agencies which would be financially affected by the termination of assistance and to each agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these agencies at the same time the recipient's request is made to ACTION. The recipient shall promptly send ACTION a list of the agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible ACTION official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible ACTION official a list of all agencies notified and the date of notification.

(e) If the responsible ACTION official has initiated termination proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with § 1206.1-7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACTION and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any measure taken thereafter by

ACTION pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible ACTION official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible ACTION official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACTION.

(h) The responsible ACTION official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

§ 1206.1-6 Time and place of termination hearings.

The termination hearing shall be held in Washington, D.C., or in the appropriate Regional Office, at a time and place fixed by the responsible ACTION official unless he determines that the convenience of ACTION, or of the parties or their representatives, requires that another place be selected.

§ 1206.1-7 Termination hearing procedures.

(a) *General.* The termination hearing, decision, and any review thereof shall be conducted in accordance with the rules of procedure set forth in this section and §§ 1206.1-8 and 1206.1-9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible ACTION official or, at the discretion of the responsible ACTION official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of ACTION or the appropriate Regional Counsel: *Provided,* That the attorney designated to assist him has not represented ACTION or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both ACTION and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to ACTION, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as

possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and ACTION, and, in the case of denial, a brief statement of the reasons therefor: *Provided however,* That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(e) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice.* The responsible ACTION official shall send the recipient and any other party a written notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the ACTION requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear.* The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to ACTION of its intention to appear at the hearing 3 days before it is scheduled to occur. Failing to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service.* All papers and documents filed or sent to party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however,* That the effective date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of ACTION.

(i) *Prehearing conferences.* Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b)(2), of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and crossexamination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcription shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice.* Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific date issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of ACTION. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of § 1206.1-8(a).

§ 1206.1-8 Decisions and notices regarding termination.

(a) Each decision of a presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to § 1206.1-7(m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible ACTION official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible ACTION official his written exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible ACTION official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own written decision thereof, including the reasons therefore. The decision of the responsible ACTION official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible ACTION official and a written copy of the final decision of the responsible ACTION official shall be given to the recipient.

(e) The recipient may request the Director to review a final decision by the responsible ACTION official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the Director or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible ACTION official or remand the matter to the responsible ACTION official for further hearing or consideration. The decision of the responsible ACTION official will be given great weight by the Director or his designee during the review. During the course of his review the Director or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Direct or his designee assistance shall remain suspended under the terms and conditions specified by the responsible ACTION official, unless the responsible ACTION official or the Director or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the Director or his designee within 30 days of receipt by the Director of the recipient's request. The Director or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

§ 1206.1-9 Right to counsel; travel expenses.

In all proceedings under this subpart, whether formal or informal, the recipient and ACTION shall have the right to be represented by counsel or other authorized representatives. If the recipient and any agency which has a right to participate in an informal meeting pursuant to § 1206.1-4 or a termination hearing pursuant to § 1206.1-7 do not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such recipient and agency will be authorized to designate an attorney to represent their organizations at any such show cause proceeding or termination hearing and to transfer sufficient funds from the Federal grant monies they have received for the project to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the prior express written approval of ACTION. Travel and per diem expenses may be paid to such attorney only in accordance with the policies set forth in the Standard Government Travel Regulations and in §§ 1206.3-1 and 1206.3-6 of this chapter. The Boards of Directors of the recipient or any agency which has a right to participate in an informal meeting pursuant to § 1206.1-4 or a termination hearing pursuant to § 1206.1-7 will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from Federal grant or contract monies. Such travel and per diem expenses shall conform to the policies set forth in the Standard Government Travel Regulations and in §§ 1206.3-1 and 1206.3-6 of this chapter.

§ 1206.1-10 Modification of procedures by consent.

The responsible ACTION official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this subpart with the consent of the recipient and, in the case of a termination hearing, with the consent of all agencies that have a right to participate in the hearing pursuant to § 1206.1-5(e). Such consent must be in writing or be recorded in the hearing transcript.

§ 1206.1-11 Other remedies.

The procedures established by this subpart shall not preclude ACTION from pursuing any other remedies authorized by law.

Subpart B—Denial of Application for Refunding

§ 1206.2-1 Applicability of this subpart.

This subpart applies to grantees and contractors receiving financial assistance under titles I, II, and III of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113.

§ 1206.2-2 Purpose.

This subpart establishes rules and review procedures for the denial of a current recipient's application for refunding.

§ 1206.2-3 Definitions.

As used in this subpart, the terms "ACTION," "Director," and "recipient" shall be defined in accordance with § 1206.1-3.

§ 1206.2-4 Procedures.

(a) Wherever possible, ACTION shall make a tentative decision at the time of its field preview as to the level of refunding which it intends to furnish a recipient for the recipient's next program year. An ACTION official shall notify the recipient of this tentative decision normally in the letter of understanding and as soon as possible following the field preview.

(b) The procedures set forth in paragraphs (c) through (g) of this section shall apply only where an application for refunding submitted by a current recipient is rejected or is reduced to 80 percent or less of the recipient's current level of operations or where ACTION requires that a program account be eliminated or reduced to 80 percent or less of the current level of operations. These procedures apply only to reductions based on circumstances related to the particular grant or contract, such as ineffective or improper use of Federal funds or noncompliance with ACTION rules, regulations and program guidelines directives. These procedures do not apply to reductions based on legislative requirements, or on general policy or in instances where regardless of a recipient's current level of operations, its application for refunding is not reduced by 20 percent or more.

(c) Before rejecting an application of a recipient for refunding the refunding within the meaning of paragraph (b) of this section, ACTION shall notify the recipient of its intention and shall offer the recipient an opportunity to submit written material and to meet informally with an ACTION official to show cause why its application for refunding should not be rejected or reduced. Written notification of ACTION's intention shall be sent to the recipient as far in advance of the end of the recipient's current program year as possible. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall also state the reasons for the tentative decision to which the applicant shall address himself if he wishes to make a presentation.

(d) If the recipient requests an informal meeting with an ACTION official as discussed in paragraph (c) of this section, such a meeting shall be scheduled by ACTION as soon as possible after the notice is sent to the recipient informing it of ACTION's tentative decision to reject or reduce its application for refunding. However, this meeting may not, without the consent of the recipient, be scheduled sooner than 14 days after ACTION has mailed the notice to the recipient. If without fault on the part of the recipient, the recipient's operating funds have been exhausted before it has been afforded an opportunity to meet with an ACTION official, the recipient shall be furnished sufficient financial assistance by ACTION to maintain its present level of program operations until it has had such opportunity.

(e) The official who shall conduct this meeting shall be an ACTION official who is authorized to make the grant of assistance in question, or his designee. However, in the case of any grant which may be made by a regional official only with the concurrence of a Headquarters official, and in which the application for refunding is proposed to be rejected or reduced upon the initiative of the Headquarters official, the meeting shall be conducted by such Headquarters official or his designee.

(f) An ACTION official who participated in the tentative decision to reject or reduce the application for new assistance shall wherever possible attend the meeting. The meeting shall be held in Washington, D.C., in the appropriate Regional Office, or in the city or county in which the recipient is located. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by ACTION. If the meeting is held in a location other than the city or county in which the recipient is located, ACTION will authorize the Board of Directors of the recipient to transfer sufficient funds from its current operating grant or contract to pay the travel and per diem expenses of a representative of the Board to attend the meeting.

(g) The recommendation of the official who conducts the meeting together with any written material submitted by the recipient shall be forwarded for review to an ACTION official who is authorized to make the grant of assistance in question. This official shall inform the recipient of his decision and the basis for the decision.

§ 1206.2-5 Right to counsel.

In all proceedings under this subpart, whether formal or informal, the recipient and ACTION shall have the right to be represented by counsel or other authorized representatives. If the recipient does not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Board of Directors of the recipient will be authorized to designate an attorney to represent their organization at the meeting described in § 1206.2-4(f) and to transfer sufficient funds from its current operating grant to pay the fees, travel and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the express written approval of ACTION. Travel and per diem expenses may be paid to such attorney from grant funds only in accordance with the policies set forth in the Standard Government Travel Regulations.

PART 1207—SENIOR COMPANIONS PROGRAMS

Subpart A—General

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Subpart B—Local Program Sponsors

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AUTHORITY: Secs. 211(b), 402(14) and 420 of Pub. L. 93-113, 87 Stat. 402, 407, and 414.

SOURCE: 39 FR 5770, Feb. 15, 1974, unless otherwise noted.

Subpart A—General

§ 1207.1-1 Introduction.

(a) Section 211(b), Part B, of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 402, authorizes the Director of ACTION to make grants or contracts to develop and operate Older American Community Service Programs. The purpose of these programs is to create part-time volunteer community service opportunities with stipends for low-income persons, age 60 or over, to provide supportive person-to-person services to persons, other than children, having exceptional needs. Such services are provided in health, education, welfare and related settings.

(b) This program will be referred to throughout these rules and regulations and for all other purposes as the Senior Companion Program.

(c) These regulations concern only grants because the contract format will not be used in the development and operation of local programs.

§ 1207.1-2 Definitions.

As used in this subpart the terms "ACTION" or "ACTION office" include each Regional Office.

Subpart B—Local Program Sponsors

§ 1207.2-1 Eligibility and funding.

ACTION shall make grants only to public and nonprofit private agencies and organizations. Such agencies and organizations must be legal entities, such as non-profit corporations or incorporated associations. These grants can be made to pay up to 90 percent of the costs of development and operation of community service programs designed to carry out the purpose of this part. In exceptional situations, the Director of ACTION may approve assistance for more than 90 percent of such costs. A local program must meet one or more of the following criteria to be eligible to receive grant assistance for more than 90 percent of costs:

(a) The program is located in an area where non-Federal resources are too limited to provide 10 percent of the total program cost. This may be due to short or long-term conditions of poverty in an area where there is a serious need for the program.

(b) The program is located in an area where an emergency situation exists, such as a county or state which has been declared a disaster area and there is a serious need for the program.

(c) A demonstration program determined to be of exceptional value, sufficient to warrant Federal support in excess of 90 percent of total project cost.

(d) Volunteer stations as defined in § 1207.3-2 shall not be sponsors.

§ 1207.2-2 Grant application.

Any eligible agency or organization may file an application for a grant with ACTION. Grant application forms may be obtained from any ACTION Office. The grant application is designed to provide ACTION with information needed to evaluate an applicant's capacity to develop and operate a program. The application must contain a proposed budget in appropriate categories, including necessary administrative and operational costs and such direct benefits to volunteers as stipends, accident insurance, transportation, meals, physical examinations, and other related benefits. The application shall identify the location, objectives and plan of the program and include copies of agreements or contracts related to the program, staff position descriptions, qualifications of principal staff members, and such other pertinent information as the Director may require.

§ 1207.2-3 State Agency on Aging and Community Action Agency participation.

Under certain circumstances, State Agencies on Aging under section 304(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3024(a)(1)) and Community Action Agencies (CAA's) under Title II of the Economic Opportunity Act, as amended, must be offered a reasonable opportunity to apply for a grant or must be consulted in the development of the local program.

(a) *State Agencies on Aging.* (1) When a program is proposed to be carried out throughout a State or in an area more comprehensive than one community, the appropriate State Agency on Aging must be afforded a reasonable opportunity to apply for and receive the grant and to administer or supervise the administration of the program. The State Agency on Aging will be considered to have received a reasonable opportunity: If it has not submitted a grant application to ACTION within 45 days of receiving notice from ACTION that another organization has applied for a grant, or if it has waived its opportunity in writing.

(2) ACTION shall notify the applicable State agency in writing or by telegram that it is considering awarding a grant. This will enable the agency to consider applying for such an award within the 45-day period. The assurances referred to in the paragraph (a)(4) of this section will constitute a written waiver.

(3) If both a State Agency on Aging and another organization apply for the same grant, the decision to award the grant to the other organization must be based on a clear written statement that the application and a review of the prospective sponsor's qualifications indicate it will carry out the program more effectively.

(4) Where the State agency is not the grantee, applications for local programs must contain satisfactory written assurances that the program has been developed, and will, to the extent appropriate, be conducted in consultation with, or with the participation of the appropriate State Agency on

Aging. A letter in the grant application from the appropriate State Agency on Aging containing the following information constitutes such an assurance: (i) The program has been developed with assistance of the State agency and (ii) will be, to the extent appropriate, conducted in consultation with it.

(b) *Community Action Agency.* Where a program is proposed to be undertaken entirely in a community served by a CAA, the procedure described in paragraph (a) of this section shall be followed except that requirements relating to the State Agency on Aging shall be related instead to the CAA.

(c) Except for new grant applicants in connection with paragraph (a) of this section, no new grant application shall be awarded unless the State Agency on Aging has been afforded at least 45 days in which to review the application and to make recommendations thereon. The grant application shall include a written statement from the applicable State Agency on Aging to the effect: (1) It has waived its right to comment on the program, or (2) it supports or rejects the program and its reasons therefor.

§ 1207.2-4 Responsibilities.

(a) The Sponsor will be responsible for the programmatic and fiscal aspects of the program. These responsibilities include:

(1) Selection and employment of a Program Director.

(2) Development of opportunities for volunteer service at or through volunteer stations.

(3) Recruitment, selection, and training of Senior Companions.

(4) Orientation of volunteer station staff to the use of volunteers before and, as appropriate, during their period of assignment.

(5) Payment of volunteer stipends and arrangement of transportation and, when possible, meals for volunteers.

(6) Provision of non-Federal cost sharing support of at least 10 percent of the costs of the program.

(7) Submission of such records, including programmatic and fiscal reports to ACTION, as it may require.

(8) Arrangement for appropriate recognition of volunteers for their services to the community.

(9) Adherence to ACTION's regulation, policies, and procedures concerning or affecting the program.

(10) The sponsor may contract, or otherwise arrange, with other organizations for services to help the sponsor carry out its responsibilities such as transportation or accounting services. However, the sponsor has primary responsibility for direct operation and administrative aspects of the project. Such responsibility cannot be contracted or delegated away.

§ 1207.2-5 Local program staff.

(a) Program staff are employees of the sponsoring organization. Senior Companion Program volunteers may not serve as staff of the sponsor. Relatives of the sponsor's employees, or of a member of its Board of Directors cannot be employees of the local program, except with the knowledge and concurrence of the program's Advisory Council. The Advisory Council shall concur only in unusual circumstances, which shall include the inability to find in the community another person having the skills required.

(b) ACTION must concur in writing before the sponsor employs a Program Director. The Director shall not be employed, paid, or used in another position while serving as Director of the local program.

Subpart C—Program Description

§ 1207.3-1 Introduction.

Volunteers perform a variety of activities at various kinds of volunteer stations.

§ 1207.3-2 Volunteer stations.

(a) Volunteer stations are public and private nonprofit agencies or organizations, as well as proprietary health care organizations, in or through with volunteers serve in accordance with program policies. The term "proprietary health care organizations" includes proprietary nursing homes, homes for the aged or other private health care facilities. Each health care facility serving as a volunteer station must be licensed or otherwise certified by the appropriate state or local government.

(b) Volunteer stations shall be within the service area of the local program. The service area is the community or communities in which the sponsor is authorized to recruit volunteers and in which they are to serve. Existing or traditional boundaries for planning and fund raising or for social service programs may influence, but shall not predetermine the service area.

(c) Specific requirements for the three major kinds of volunteer stations are:

(1) *Residential care volunteer station.* A minimum of 10 Senior Companions must be placed in a single residential care facility that accommodates at least 30 or more persons with special needs.

(2) *Nonresidential care volunteer stations.* A minimum of 5 Senior Companions must be placed in a single nonresidential care facility that accommodates at least 15 or more persons with special needs.

(3) *Private home placement volunteer stations.* (i) A Senior Companion may provide supportive person-to-person service in the home of one or more adults having special needs when assigned by a volunteer station responsible for the Senior Companion.

(ii) Volunteer station staff shall receive orientation from the sponsor, prior to the assignment of volunteers, concerning the Senior Companion Program and use of Senior Companions. Additional orientation may be provided to volunteer station staff, if necessary, during the period Senior Companions serve in or through a volunteer station.

§ 1207.3-3 Activities.

(a) Senior Companion activities must involve person-to-person relationships and not service to the volunteer stations or any other organization in which volunteers will serve. Activities serve the dual purpose of being meaningful to Senior Companions and providing support and companionship to adults being served. At least 80 percent of those persons served by Senior Companions in each program shall be age 60 or over.

(b) Sponsors should aim to provide volunteer services to those adults with the greatest need; thus, activities should benefit persons, such as the physically and emotionally handicapped, persons receiving home health care, nursing care, financial assistance, or meals on wheels, and persons having developmental disabilities or special needs for companionship.

§ 1207.3-4 Memorandum of understanding.

Sponsor, usually through the Program Director, and each volunteer station, prior to assignment of volunteers, shall jointly prepare and sign a Memorandum of Understanding for the purpose of clarifying working relationships, facilitating communications and promoting cooperation. The Memorandum shall include the following information: The kind of volunteer station (residential, non-residential, private home, etc.); the number of adults with special needs to be served by Senior Companions and the potential number of adults eligible to receive service; the primary staff person at the volunteer station with whom the local Senior Companion Program staff will work; the number of Senior Companions planned for the volunteer station; provision for an appeal procedure for Senior Companions; the extent of the volunteer station's support of the Senior Companions' benefits: meals, transportation, space, etc.; the safety provisions that will protect the Senior Companions; and other conditions mutually desired. In the case of Senior Companions serving in private homes, the Memorandum of Understanding shall also require that the volunteer station obtain a letter or other written document from the person served, or the person(s) legally responsible for that person, authorizing or requesting volunteer service in the home and indicating what specific volunteer activities are requested. The Memorandum of Understanding shall be reviewed for possible changes and updated annually by the concerned local parties. It may be amended at any time by mutual agreement.

§ 1207.3-5 Advisory council.

(a) The sponsor shall establish a Senior Companion Program Advisory Council to advise and assist the sponsor in planning, support, related project operations and an annual appraisal of the local program.

(b) The Advisory Council membership should include major private and public community agencies, minority groups, civic and service organizations and representatives of volunteer stations and organizations concerned with the interests of older persons and voluntarism. One fourth of the members shall be or represent low income persons age 60 or over and should include at least one Senior Companion as a member.

(c) The sponsor's chief executive or his designee, a member of its governing body, and the program director shall be members of the Council and shall not serve as officers of the Council. Only the member of the sponsor's governing board shall be a voting member of the Council.

Subpart D—Volunteers

§ 1207.4-1 Eligibility.

(a) A Senior Companion shall be 60 years of age or older, no longer in the regular work force, determined by a physical examination to be capable of serving adults with special needs and willing to accept supervision as required.

(b) (1) A Senior Companion shall not have an annual income from all sources, other than stipends received as a volunteer, which exceed the poverty line as set forth in the currently applicable guideline published by the Office of Economic Opportunity pursuant to section 625 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2971(a)). However, the Director of ACTION may raise this income level to reflect the higher cost of living in the geographic area to be served by the project. Such determination may be based on other price, cost-of-living, income or similar indexes.

(2) An enrolled Senior Companion shall lose eligibility for continued service as a consequence of annual income that equals or exceeds 20 percent of the level established by paragraph (b)(1) of this section at the time such determination is made. The sponsor is responsible for an annual review of the income of each Senior Companion and referral of those with increased incomes to the Advisory Council for a final recommendation regarding continued eligibility.

(c) Eligibility to be a Senior Companion may not be based on race, creed, sex, or national origin. Sponsors shall ensure that special efforts are made to recruit and select qualified individuals from minority groups to serve as Senior Companions.

§ 1207.4-2 Recruitment and instruction.

(a) The sponsor is responsible for recruitment of Senior Companions in accordance with the standards of eligibility in § 1207.4-1. Volunteer assignments in identified volunteer stations should be determined before recruitment of Senior Companions begins. The sponsor shall provide each volunteer with a physical examination prior to service to assure that he is physically able to serve without detriment to himself or to the adults served. Physical examinations shall be provided annually thereafter.

(b) The sponsor shall provide or arrange an orientation of not less than 40 hours for each Senior Companion volunteer before service begins. Thereafter, each volunteer shall be provided group in-service instruction for a minimum of four hours each month.

§ 1207.4-3 Terms of service.

(a) *Period of service.* Senior Companions serve usually five days a week for a total of twenty hours a week. Transportation time between the volunteer's home and place of assignment, and meal time during volunteer service, shall not be considered part of the service period. However, if it is required that meals are taken with the persons served, such time shall count as volunteer service.

(b) (1) *Stipends.* Senior Companions will receive an annual stipend for service rendered, payable in regular installments. The amount of such a stipend will be set by ACTION through periodic instructions sent to sponsors.

Sponsor shall establish policy and procedures to reduce the stipend to reflect the volunteer's absence from his assignment. Reasonable periods of absence because of sickness or other unusual situations, consistent with policies of the sponsor, shall be allowed.

(2) The sponsor may pay a higher stipend than that established nationally, but this excess payment may not be included in the Federal cost or be counted as part of the non-Federal cost sharing contribution required of the local program.

(3) For Federal, State and local purposes, no stipend shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, or similar benefit payments, or minimum wage laws. Stipends shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such Senior Companions may be receiving or will receive under any Federal, State or local governmental program.

(c) (1) Transportation and meals. Sponsors shall arrange or assist with the provision of transportation for Senior Companion volunteers, as needed, between their homes and volunteer assignments and for official program activities, including orientation, recognition ceremonies and attendance at Advisory Council meetings. Sponsors may also reimburse volunteers for transportation costs to the extent permitted by both grant and local funds and in accordance with local program transportation policy.

(2) The sponsor will arrange for, or assist with, the cost of meals for orientation and volunteer assignments extending through a meal period within the limits of available resources and local program policy.

(d) (1) Insurance and safety. All Senior Companions shall be covered by accident insurance. Where coverage is not provided under the State Workmen's Compensation Law, the sponsor shall furnish accident insurance coverage. Sponsors shall also provide third-party liability insurance for injury to third persons and damage to such persons' property resulting from the services of Senior Companions. The extent of coverage shall be detailed in each grant application prior to the making of a grant award. The minimum amounts of accident and third-party liability insurance required are as follows:

(i) *Accident insurance.* Minimum limits of $10,000 for accident medical expenses, $1,000 for accidental death and dismemberment, and to include coverage to and from the place of assignment, and during the assignment.

(ii) *Third-party liability (non-automobile).* Minimum limits of $100,000 each person $300,000 each occurrence for bodily injury and $50,000 each occurrence for property damage.

(2) Sponsors shall also be required to make sure that volunteers using their own vehicles have automobile liability insurance equal to the minimum required by State law. If no State minimum coverage exists, then the volunteer must have a policy providing the following coverage at a minimum: $15,000 each person and $30,000 each occurrence for bodily injury and $5,000 each occurrence for property damage.

(3) ACTION sponsors should also have liability insurance covering their owned or leased vehicles, and vehicles belonging to Senior Companions, which are used in program activities. Levels of required insurance coverage will be set forth in an ACTION instruction made available to grant applicants.

(4) Sponsors shall ensure that adequate provisions for safety of Senior Companions are in force at each volunteer station.

(e) (1) Appeal of sponsor's actions and separations. The sponsor shall establish a procedure whereby a Senior Companion may appeal an action or decision by the sponsor or program staff, or the supervisory staff of the volunteer station. The procedure will provide for the review of the Senior Companions request by the Advisory Council, or a committee thereof, which shall recommend to the chief executive of the sponsor what action to take. Final decision on such an appeal shall be made by the chief executive.

(2) The sponsor may separate Senior Companions from the program for

cause, including extended absence, chronic illness, misconduct, inability to perform the volunteer assignment and income in excess of the standard set forth in § 1207.4-1(b). The sponsor shall provide a procedure to review appeals from such separations. The procedure shall be the same as that mentioned in the preceding paragraph in connection with appeals of sponsor's actions.

Subpart E—General

§ 1207.5-1 Coordination.

(a) The sponsor of a project under this Part shall coordinate project activities with related groups and individuals, including those representing government, industry, labor, voluntary organizations, programs for the aging, including in particular area Agencies on Aging, and other ACTION programs, to facilitate cooperation with existing community services and develop needed community support.

(b) ACTION will consult and coordinate with national, state and local agencies, the Administration on Aging in particular, and nonprofit private organizations to promote the development of volunteer service opportunities for older persons.

§ 1207.5-2 Grant awards.

ACTION will within funds available award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program.

§ 1207.5-3 Grant conditions.

Fiscal and administrative policies and procedures set forth in ACTION instructions and handbooks shall be made available to sponsors at the time they receive a grant award. Grant termination, suspension, and denial of continuation appeal procedures are contained in Part 1206.

§ 1207.5-4 Program changes.

Permissible changes in the approved program plan shall be limited to minor changes which do not substantially alter the substances of the program plan for which the grant was received. The following changes must receive prior written approval of ACTION:

(a) Appointment of the local Program Director.

(b) Placement of Senior Companions with volunteer stations not included in the grant application or in subsequently approved program amendments.

(c) Reassignment of Senior Companions that cause an increase or decrease of 10 percent or more of the Senior Companions assigned to approved volunteer stations.

§ 1207.5-5 Special legal limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to Federal office, or any voter registration activity. The term "election" has the same meaning given such terms by section 301(a) of the Federal Election Campaign Act of 1971 (Pub. L. 92-225) and the term "Federal office" has the same meaning given such term by section 301 (c) of such Act.

(2) No local program shall be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such program with (i) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (iii) any voter registration activity.

(b) *Special limitations.* (1) The service of Senior Companion volunteers is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(2) All support, including transportation provided to volunteers shall be furnished at the lowest possible costs consistent with the effective operation of volunteer programs.

(3) No sponsor or volunteer station shall request or receive any compensation for services of Senior Companions supervised by it.

(4) No grant funds shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(c) *Nondiscrimination.* (1) No person with responsibilities in the operation of a local program shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, or political affiliation.

(2) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any project.

PART 1208—FOSTER GRANDPARENT PROGRAM

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AUTHORITY: Secs. 211(a), 212, 221, 222, 223, 402(14) and 420 of Pub. L. 93-113, 87 Stat. 402, 403, 404, 407, 414.

SOURCE: 40 FR 40806, Sept. 4, 1975, unless otherwise noted.

Subpart A—General

§ 1208.1-1 Introduction.

The purpose of this program is to provide meaningful part-time volunteer opportunities for low-income older persons to render supportive person-to-person services to children having special or exceptional needs in health, education, welfare and related settings.

(a) Section 211(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 402, authorizes the Director of ACTION to make grants or contracts to develop and operate a Foster Grandparent Program.

(b) These regulations relate only to grants. The contract format will not be used in the development and operation of local projects.

§ 1208.1-2 Definitions.

As used in this part the terms "ACTION" or "ACTION office" include each Regional office. The local program for which a sponsor receives grant assistance will be referred to as a project.

Subpart B—Project Sponsors

§ 1208.2-1 Eligibility and funding.

ACTION shall make grants only to public and nonprofit private agencies and organizations which have authority to accept grants for the purposes of this part and have the capability of administering such a project. Volunteer stations, as defined in § 1208.3-2, shall not be sponsors. These grants can be made to pay up to 90 percent of the costs of development and operation of programs designed to carry out the purpose of this part. In exceptional situations, the Director of ACTION may approve assistance for more than 90 percent of such costs. A project must meet one of the following criteria to be eligible to receive grant assistance for more than 90 percent of costs:

(a) The project is located in an area where non-federal resources are too limited to provide 10 percent of the total project cost. This may be due to short or long-term conditions of poverty in an area where there is a serious need for the project, or

(b) The project is located in an area where an emergency situation exists, such as a county or state which has been declared a disaster area and there is a serious need for the project.

§ 1208.2-2 Grant application.

Any eligible agency or organization may file an application for a grant with ACTION. Grant application forms may be obtained from any ACTION office. The grant application is designed to provide ACTION with information needed to evaluate an applicant's capacity to develop and operate a project. The application will include:

(a) General goals for the proposed project, consistent with the purpose of this part.

(b) Specific objectives to be achieved, activities to be undertaken and methods to be followed during the project budget period in support of the stated goals.

(c) A detailed budget and budget item justification.

(d) Duties of projected staff positions and qualifications required for incumbents of the positions.

(e) Ways in which active coordination is to be established with other aging and volunteer-related organizations, including the State Agency on Aging, if the State agency is not the sponsor.

(f) Type of membership and functions of a Foster Grandparent Advisory Council.

(g) The proposed service area to be served by the project.

(h) Copies of Memoranda of Understanding with proposed volunteer stations.

(i) Available data on the population, age 60 and over, in the proposed service area.

(j) A description of the special efforts the sponsor will make to recruit and to select qualified individuals from minority groups to serve as Foster Grandparents.

§ 1208.2-3 State Agency on Aging and Community Action Participation.

Under certain circumstances, State Agencies on Aging under section 304(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3024(a)(1)) and Community Action Agencies (CAA's) under Title II of the Economic Opportunity Act, as amended, must be offered a reasonable opportunity to apply for a grant or must be consulted in the development of the project.

(a) *State Agencies on Aging.* (1) When a project is proposed to be carried out throughout a State or in an area more comprehensive than one community, the appropriate State Agency on Aging must be afforded a reasonable opportunity to apply for and receive the grant and to administer or supervise the administration of the project. The State Agency on Aging will be considered to have received a reasonable opportunity if it has not submitted a grant application to ACTION within 45 days after receiving notice from ACTION that another organization has applied for a project grant, or if it has waived its opportunity in writing.

(2) ACTION shall notify the applicable State Agency in writing or by telegram that it is considering awarding a grant. This will enable the agency to consider applying for such an award within the 45-day period. The assurances referred to in paragraph (a)(4) of this section will constitute a written waiver.

(3) If both a State Agency on Aging and another organization apply for grant assistance when available funds are limited, the decision to award a grant to the other organization must be based on a clear written statement that the application and a review of the prospective sponsor's qualifications indicate it will carry out the project more effectively.

(4) Where the State Agency is not the grantee, applications for projects

must contain satisfactory written assurances that the project has been developed, and will, to the extent appropriate, be conducted in consultation with or with the participation of the appropriate State Agency on Aging. A letter in the grant application from the appropriate State Agency on Aging containing the following information constitutes such an assurance: (i) The project has been developed with assistance of the State Agency, and (ii) will be, to the extent appropriate, conducted in consultation with it.

(b) *Community Action Agency.* Where a project is proposed to be undertaken entirely in a community served by a Community Action Agency, the procedure described in paragraph (a) of this section shall be followed, except that requirements relating to the State Agency on Aging shall relate instead to the Community Action Agency.

(c) Except for new grant applicants to which paragraph (a) of this section applies, no new grant awards shall be made unless the State Agency on Aging has been afforded at least 45 days in which to review the application and to make recommendations thereon. The applicable State Agency shall state in writing to ACTION that: (1) It has waived its right to comment on the project, or (2) it supports or cannot recommend the project and its reasons therefor.

§ 1208.2-4 Responsibilities.

(a) The sponsor shall be responsible for the programmatic and fiscal aspects of the project, including:

(1) Creation of a Foster Grandparent Program Advisory Council as soon as possible, in accord with § 1208.3-5.

(2) Selection and employment of a full time director and other project staff, as approved.

(3) Development of specific assignments for volunteer service at or through approved volunteer stations.

(4) Recruitment, selection, orientation, in-service instruction and placement of Foster Grandparents.

(5) Orientation of volunteer station staff in working with foster grandparents before and, as appropriate, during their period of assignment.

(6) Provision of or arrangement for adequate on-site supervision and support of Foster Grandparents.

(7) Payment of volunteer stipends and arrangement of transportation and, when possible, meals for volunteers.

(8) Provision of the required non-federal cost sharing support of the project in cash or allowable in-kind support.

(9) Maintenance of an internal record-keeping system including information on Foster Grandparents, volunteer stations, children served, and other pertinent project information.

(10) Submission of such reports, including programmatic and fiscal reports and retention of such records as ACTION may require.

(11) Arrangement for appropriate recognition of volunteers for their services to the community.

(12) Adherence to ACTION's policies and procedures concerning or affecting the project.

(13) Annual project appraisal.

(14) Public information functions.

(b) The sponsor may contract, or otherwise arrange, with other organizations for services to help the sponsor carry out its responsibilities, such as transportation or accounting services. However, the sponsor has primary responsibility for the operation and administration of the project. Such responsibility cannot be contracted or delegated to any person, agency, or organization.

§ 1208.2-5 Project staff.

(a) Project staff are employees of the sponsoring organization. Foster Grandparent Program volunteers may not serve as staff of the sponsor. Relatives of the sponsor's employees, or of a member of its Board of Directors, may not be employed in the project, except with the knowledge and concurrence of the project's Advisory Council and notification to ACTION.

(b) ACTION must concur in writing before the sponsor employes a project director. The project director shall not be concurrently employed, paid, or used in another position during established working hours while serving as director of the project. However, under certain circumstances, established by the Director of ACTION to avoid consequences detrimental to either project, the project director may also direct a Senior Companion Program.

§ 1208.2-6 Suspension or termination of a grant and denial of application for refunding.

(a) A grant may be suspended or terminated because of the sponsor's material failure to comply with the terms and conditions of a grant. A grant will not be terminated unless the sponsor has been afforded reasonable notice and a grant may not be suspended, except in emergency situations, unless the opportunity for a full and fair hearing, sponsor has been given reasonable notice and opportunity to show cause why such action should not be taken. Procedures for termination and suspension are contained in Part 1206, Subpart A of this chapter in the Code of Federal Regulations.

(b) Application for a continuation grant may not be denied unless the sponsor has been given reasonable notice and an opportunity to show cause why such action should not be taken. Procedures for denial of such an application are contained in Part 1206, Subpart B, of this chapter in the Code of Federal Regulations.

Subpart C—Project Operation

§ 1208.3-1 Introduction.

Foster Grandparents perform a variety of activities at various kinds of volunteer stations.

§ 1208.3-2 Volunteer stations.

(a) Volunteer stations are public or private nonprofit agencies or organizations, or proprietary health care organizations, in or through which volunteers serve in accordance with program policies. Each child care facility serving as a volunteer station must be licensed or otherwise certified by the appropriate State or local government.

(1) Individual private homes are not volunteer stations. Volunteer stations select and recommend children with special or exceptional needs to be served in their homes by Foster Grandparents.

(2) Volunteer stations making assignments to private homes shall provide supervision to Foster Grandparents through regular visits to the individual homes.

(b) Volunteer stations shall be within the service area of the project. The service area is the community or communities in which the sponsor is authorized to recruit volunteers and in which they are to serve. Existing or traditional boundaries for planning or for social service delivery systems may influence, but shall not predetermine the service area.

(c) Placement of Foster Grandparents in group care volunteer stations shall be made in numbers large enough to permit social interaction between the Foster Grandparents and to facilitate group transportation and adequate supervision.

(d) Volunteer station staff shall receive orientation from the sponsor, prior to the assignment of volunteers, concerning the Foster Grandparent Program, and volunteer service of Foster Grandparents. Additional orientation may be provided to volunteer station staff, if necessary, during the period Foster Grandparents serve in the volunteer station.

§ 1208.3-3 Activities.

Foster Grandparent activities develop person-to-person, supportive relationships with children and do not provide service to the volunteer stations or any other organization in which volunteers may be serving. Activities serve the dual purpose of being personally meaningful to Foster Grandparents and providing support and companionship to children being served.

§ 1208.3-4 Children served.

(a) Children served by Foster Grandparents shall be chronologically age 17 or under, with preference given to younger children. In exceptional cases, however, a child may continue to be served through age 20 by the same Foster Grandparents if:

(1) It has been professionally determined that with the same Foster

Grandparent, there is a likelihood of improvement for the child in personal adjustment, social relationships, learning ability and/or motor coordination; and

(2) The volunteer station has developed a plan in writing to provide for an alternative supportive relationship after age 20 for the person being served by the Foster Grandparent.

(b) Sponsors shall arrange to provide volunteer services to children with special or exceptional needs such as the physically handicapped, delinquent, emotionally disturbed, mentally retarded or dependent and neglected children in hospitals, correctional facilities and other residential institutions, and in schools or day care establishments, and in private residences.

(c) Volunteer stations shall select the children to be served with concurrence of the sponsor. The sponsor shall match and assign Foster Grandparents to selected children in cooperation with the volunteer station.

(d) Foster Grandparents shall preferably, but not exclusively, be assigned to two children, served individually, to maximize the gains to children from a supportive, person-to-person relationship with a mature adult.

§ 1208.3-5 Memorandum of Understanding.

Prior to assignment of volunteers, the sponsor and each volunteer station, shall jointly prepare and sign a Memorandum of Understanding for the purpose of clarifying working relationships, facilitating communication and promoting cooperation. The Memorandum must include the following information: The kind of volunteer station (residential, nonresidential, etc.), the type of child care provided, the number of children with special needs to be served by Foster Grandparents and the potential number of the children eligible to receive service; the primary staff person at the volunteer station to whom the Foster Grandparent Program staff will relate; the number of Foster Grandparents planned for the volunteer station; the extent of the Foster Grandparent's benefits to be provided by the volunteer station: meals, transportation, physical examinations, space, etc.; the safety provisions that will protect the Foster Grandparents, and other conditions mutually desired. In the case of Foster Grandparents serving in private homes, the Memorandum of Understanding shall also require that the volunteer station obtain a letter or other written document from the person(s) legally responsible for that child, authorizing or requesting volunteer service in the home and indicating what specific volunteer activities are requested. The Memorandum of Understanding must be reviewed for possible changes and updated annually by the sponsor and the volunteer station. It may be amended at any time by mutual agreement.

§ 1208.3-6 Advisory Council.

(a) The sponsor shall establish a Foster Grandparent Program Advisory Council to advise and assist the sponsor in planning, community support, project operational problems, and provide an annual appraisal of project operations and progress.

(b) The Advisory Council membership shall be representative of the community, including major private and public community agencies, minority groups, civic and service organizations and representation from volunteer stations and organizations concerned with the interests of older persons and voluntarism. One-fourth of the members shall be or represent low income persons, age 60 or older, and may include Foster Grandparents.

(c) The sponsor's chief executive or his designee, a member of its governing body, and the project director shall be members, but not officers of the Council. Only the member of the sponsor's governing board shall be a voting member of the Council.

Subpart D—Volunteers

§ 1208.4-1 Eligibility.

(a) A Foster Grandparent shall be 60 years or older, no longer in the regular work force, determined by a physical examination to be capable of serving children with special or exceptional needs without detriment to self or child, and willing to accept supervision as required.

(b) (1) A Foster Grandparent applicant shall not be enrolled with an annual income from all sources which exceeds the income eligibility level for Foster Grandparents established by ACTION. The income eligibility level established in conformance with section 421(4) of Pub. L. 93-113, is determined by the national poverty line set forth in section 625 of the Economic Opportunity Act of 1964, as amended, to which is added for individual states the amount a state supplements Federal Supplemental Security Income payments for the aged.

(2) An enrolled Foster Grandparent shall lose eligibility for continued service as a consequence of annual income that, at the time such determination is made, has increased in excess of 120 percent of the income eligibility level established by paragraph (b)(1) of this section. The sponsor is responsible for an annual review of the income of each Foster Grandparent.

(c) The sponsor shall provide each volunteer with a physical examination prior to service to assure that he is able to serve without detriment to himself or to the children served. Physical examinations shall be provided annually thereafter as a benefit to the Foster Grandparent.

(d) Participation as a Foster Grandparent may not be denied on the basis of the race, creed, sex, national origin or political affiliation of the applicant. Sponsors shall ensure that special efforts are made to recruit and select qualified individuals from minority groups to serve as Foster Grandparents.

§ 1208.4-2 Recruitment and instruction.

(a) The sponsor is responsible for recruitment of Foster Grandparents in accordance with the standards of eligibility in § 1208.4-1. Volunteer assignments in identified volunteer stations shall be determined before recruitment of Foster Grandparents begins.

(b) The sponsor shall provide or arrange an orientation of not less than 40 hours for each Foster Grandparent volunteer before regular service begins. Thereafter, each volunteer shall be provided group in-service instruction for a minimum of four hours each month in addition to in-service instruction provided to volunteers on assignments. Time spent in orientation and in-service meetings by Foster Grandparents earns the same benefits as regular volunteer service time.

§ 1208.4-3 Terms of Service.

(a) *Service schedule.* Foster Grandparents normally serve four hours a day, for a total of twenty hours a week. Transportation time between the volunteer's home and place of assignment, and meal time during volunteer service, shall not be considered part of the service period. However, if it is required that meals are taken with the children served, such time shall count as volunteer service.

(b) *Stipends.* (1) Foster Grandparents receive an annual stipend, payable in regular instalments. The amount of such stipend is established by the Director of ACTION consistent with the availability of program funds and at a level that will permit and encourage eligible low-income older persons to serve as volunteers without cost to themselves.

(2) Sponsor shall establish policy and procedures to reduce the stipend to reflect the volunteer's absence from his assignment. Reasonable periods of vacation or absence because of sickness or other unusual situations, consistent with policies of the sponsor, are allowable.

(3) The sponsor may pay a higher stipend than that established by ACTION, but this excess payment may not be included in the federal cost or be counted as part of the nonfederal cost sharing contribution required of the project sponsor.

(4) For federal, state and local purposes, no stipend shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, or similar benefit payments, or minimum wage laws. Stipends shall not in any way reduce or eliminate the level of or eligibility for assistance or services any Foster Grandparents may be receiving under any federal, state or local governmental program.

(c) *Transportation and meals.* (1) Sponsors shall provide or arrange for transportation for Foster Grandparents as needed, between their homes and volunteer assignments and for official project activities, including orientation, recognition ceremonies and attendance at Advisory Council meetings. Sponsors may also reimburse Foster Grandparents for transportation costs to the extent permitted by both grant and local funds and in accordance with transportation policy of the project. The sponsor will arrange for, or assist with, the cost of meals for orientation and volunteer assignments extending through a meal period within the limits of available resources and local project policy.

(d) *Insurance and safety.* (1) The sponsor shall ensure that Foster Grandparents driving their own vehicles while traveling to or from assignments have automobile liability insurance equal to the minimum required by state law or, in lieu thereof, the minimum specified in the Foster Grandparent Program Operations Handbook.

(2) The sponsor shall provide adequate insurance at such levels as defined in the Foster Grandparent Program Operations Handbook, of the following kinds:

(i) *Accident insurance.* If coverage is not required for Foster Grandparents under the state worker's compensation act, project sponsors shall provide accident insurance covering Foster Grandparents in travel to and from their place of assignment as well as during their volunteer service and during mealtime at the volunteer station.

(ii) *Personal liability insurance.* Third party, non-automobile, insurance shall be provided to protect Foster Grandparents in the event of personal injury or property damage claims arising out of their volunteer service.

(iii) *Excess automobile liability insurance.* This coverage is provided to protect Foster Grandparents against bodily injury or property damage claims arising out of the use of their automobiles to transport themselves and other Foster Grandparents to or from volunteer assignments. The insurance is to be excess over the insurance that a Foster Grandparent carries on his automobile or the limits of the state financial responsibility law, whichever is higher.

(3) The sponsor shall provide adequate automobile liability insurance protection for vehicles used by the project, as defined in ACTION policy, whether the vehicles be owned, non-owned or hired.

(4) Insurance coverage may be purchased from any source.

Sponsors shall ensure that adequate provisions for safety of Foster Grandparents are in force at each volunteer station.

(e) *Appeal of sponsor's actions and separations.* (1) The sponsor shall establish a procedure whereby a Foster Grandparent may appeal an action or decision by the sponsor or project staff or the supervisory staff of the volunteer stations. The procedure shall provide for the review of the Foster Grandparent's appeal by the Advisory Council, or a committee thereof, which shall recommend to the chief executive of the sponsoring organization what action to take. Final decision on such an appeal shall be made by the chief executive.

(2) The sponsor may separate Foster Grandparents from the project for cause, including extended absence, chronic illness, misconduct, inability to perform volunteer assignments and income in excess of the standard set forth in § 1208.4-1(b). The sponsor shall provide a procedure to review appeals from such separations. The procedure shall be the same as that mentioned in the preceding paragraph in connection with appeals of sponsor's action.

§ 1208.4-4 Legal Fees.

Counsel may be employed and counsel fees, court costs, bail and other expenses incidental to the defense of a volunteer may be paid in a criminal, civil, and administrative proceeding when such a proceeding arises directly out of the performance of the volunteer's activities. Part 1220, Title 45, Code of Federal Regulations establishes under what circumstances such expenses shall be paid.

Subpart E—General

§ 1208.5-1 Coordination.

(a) The sponsor of a project under this part shall coordinate project activities with related groups and individuals, including those representing government, industry, labor, voluntary organizations, programs for the aging, including in particular State Agencies on Aging, and Area Agencies on Aging, and with other ACTION programs, to facilitate cooperation with existing community services and develop needed community support.

(b) ACTION will consult and coordinate with national, state and local agencies, the Federal Administration on Aging in particular, and nonprofit private organizations to promote the development of volunteer service opportunities for older persons.

§ 1208.5-2 Grant awards.

ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program.

§ 1208.5-3 Grant conditions.

Fiscal and administrative policies and procedures set forth in ACTION instructions and handbooks shall be made available to sponsors at the time they receive a grant award. Grant termination, suspension, and denial of refunding appeal procedures are contained in Part 1206 of this chapter.

§ 1208.5-4 Project changes.

Permissible changes in the approved project plan shall be limited to minor changes which do not substantially alter the substance of the project plan for which the grant was received. The following changes must receive prior written approval of ACTION:

(a) Appointment of the project director and subsequent replacements.

(b) Placement of Foster Grandparents with volunteer stations not included in the grant application or in subsequently approved project amendments.

(c) Reassignment of Foster Grandparents that cause an increase or decrease of 10 percent or more of the Foster Grandparents assigned to approved volunteer stations.

§ 1208.5-5 Special legal limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to federal office, or any voter registration activity. The term "election" has the same meaning given such term by section 301(a) of the Federal Election Campaign Act of 1971 (Pub. L. 92-225) and the term "Federal office" has the same meaning given such term by section 301(c) of such Act.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such project with (i) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or any voter registration activity.

(3) No Foster Grandparent nor employee of a sponsor or volunteer station may take any action, when serving in such a capacity, with respect to a partisan or non-partisan political activity that would result in the apparent identification of the Foster Grandparent Program with such activity.

(b) *Special limitations.* (1) The service of Foster Grandparent volunteers is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(2) All support, including transportation provided to volunteers, shall be furnished at the lowest possible costs consistent with the effective operation of a volunteer project.

(3) No sponsor or volunteer station shall request or receive any compensation for services of Foster Grandparents supervised by it.

(4) No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organizations or related activity.

(c) *Nondiscrimination.* (1) No person with responsibilities in the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, age, or political affiliation.

(2) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any project.

(d) *Religious activities.* Foster Grandparents will not give religious instruction, conduct worship services or engage in any other religious activity as part of their duties.

PART 1209—RETIRED SENIOR VOLUNTEER PROGRAM

Subpart A—Purpose

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AUTHORITY: Secs. 201, 212, 221, 222, 223, 402(14), 418, 420 of Pub. L. 93-113, 83 Stat. 108, 87 Stat. 403, 404, 414.

SOURCE: 41 FR 53483, Dec. 7, 1976, unless otherwise noted.

Subpart A—Purpose

§ 1209.1-1 Purpose.

The purpose of the Retired Senior Volunteer Program is to develop a recognized role in the community and a meaningful life in retirement for older adults through significant volunteer service.

§ 1209.1-2 Nature of Program.

A Retired Senior Volunteer Program arranges varied opportunities for retired persons, age 60 and over, to serve as volunteers for the betterment of their community and themselves, with reimbursement for out-of-pocket expenses. It is organized and operated with Federal and non-Federal support in accord with the Retired Senior Volunteer Program Operations Handbook published by the Director of ACTION. The program is directed and coordinated in a community or service area by competent staff with the support of a local Retired Senior Volunteer Program Advisory Council. The community or service area is defined in the approved grant application. RSVP volunteers, aided by appropriate assignment, instruction and supervision, serve at a variety of volunteer stations, such as schools, courts, day care centers, hospitals, welfare agencies, nursing homes, and institutions. RSVP volunteers do not displace employed workers nor impair existing contracts for services. Awards and recognition appropriate to their service are given to senior volunteers.

Subpart B—Grants

§ 1209.2-1 Eligibility.

Grants may be made to State agencies on aging and other public and non-profit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer projects under this part, as determined by the Director.

§ 1209.2-2 Applications.

(a) An application under this part shall include information needed by the Director to support findings that the requirements of the Act will be met, as required in the various other sections of the part.

(b) In addition, an application will include:

(1) General goals for the proposed project, consistent with the purpose of this Part.

(2) Individual objectives to be achieved during the projected budget period in support of the stated goals.

(3) A detailed budget and budget item justification.

(4) An explicit plan for maximizing non-Federal support of the program budget.

(5) Duties of project staff positions and qualifications required for incumbents of the positions.

(6) Ways in which active coordination is to be established with other volunteer and aging-related agencies and organizations, including the State agency.

(7) Membership and functions of a Retired Senior Volunteer Program Advisory Council.

(8) Geographical boundaries to be served by the project.

(9) Copies of proposed or existing agreements with volunteer stations using RSVP volunteers.

(10) Available data on the population, age 60 and over, in the proposed service area.

(11) Existing RSVP volunteer service opportunities and those projected for development.

(12) Other information required by the Director.

(c) The application shall be executed by a person authorized to act for the applicant, and to assume on behalf of the applicant the obligations imposed by the terms and conditions of an award, including the regulations in this part.

(d) A copy of the application, other than one by the State agency on aging, shall be submitted by the applicant to the State agency which shall have 60 days after receipt to review it and make written recommendations to the Director.

§ 1209.2-3 RSVP Cost Sharing.

(a) The following RSVP Cost-Sharing Schedule identifies for each budget period, normally one year, the required percentage of the local cost sharing to approved project budgets of RSVP project sponsors, as well as the Federal contribution:

Budget period	Federal (percent)	Local (non-Federal) (percent)
1	90	10
2	80	20
3 and beyond	70	30

Local contributions may voluntarily exceed the annual required local contribution in any year. However, such voluntary contributions shall not be a consideration for receiving, or determining the size of, any RSVP initial or continuation grant.

(b) Exceptions may be made by the Director to these non-Federal cost-sharing requirements in unusual situations, with consideration given to the financial capabilities of the grant applicant and the availability of community support for RSVP. Applicants will be required to substantiate the need for an exception. The need for continuation of an exception will be evaluated annually based on the merits and progress of a project and the best interests of RSVP volunteers, the community in which they serve, and ACTION.

(c) An RSVP continuation grant shall not be awarded to a sponsor unable to meet the agreed to cost-sharing commitment for the preceding budget period. Time for meeting the commitment, however, may be extended by ACTION or the commitment may be waived under exceptional circumstances.

(d) A written request to the appropriate ACTION Regional Office through the ACTION State Office for an exception to the RSVP Cost-Sharing Schedule will be transmitted by the Regional Director to the Director of Older Americans Volunteer Programs in Washington, D.C., together with a recommendation on the request comprised of answers to questions formulated by ACTION, and all supporting data. The request will be evaluated and a recommendation made by a National Exceptions Review Board, comprised of the Associate Director of ACTION for Domestic and Anti-Poverty Operations, the Director of the Budget Division of ACTION, and the General Counsel for ACTION or their designated representatives. All requests will be acted on within two weeks after receipt of the request for an exception. The grant applicant will be advised in writing of the decision by the Director or the Director's designee and reasons for the decision.

(e) If by the end of the second or third quarter of a budget period a sponsor is unable to meet the current cost-sharing commitment, a continuation grant award may be considered only when:

(1) A full effort has been made by the sponsor to carry out the cost-sharing plan approved by the current grant award, and the circumstances causing the deficiency are found by the ACTION Regional Director to be the result of unusual or unforeseen circumstances, and

(2) There is reason to believe the deficiency, in addition to the required local share for the new budget period, can be fully made up before the end of the third quarter of a new budget period, and

(3) The project achievements and the project potential clearly merit special consideration.

(f) If at the end of a budget period it first appears there has been a failure of the RSVP sponsor to provide or obligate the non-Federal share of the RSVP budget, it constitutes a breach of the conditions of the grant. As a consequence, the ACTION Regional Director will:

(1) Request the RSVP sponsor to identify in writing: (i) When the commitment was not met, and identify specific efforts made to obtain the required non-Federal contribution.

(ii) The anticipated sources and amounts of local support for continuation of the project in the new budget period.

(iii) The kind of technical assistance requested from ACTION to improve the sponsor's capacity to develop local resources in support of RSVP.

(2) After review of the required information submitted by the RSVP sponsor to ACTION and consideration of the history and quality of the project, the Regional Director can: (i) Suspend further payments to an RSVP sponsor or terminate payments under the grant in accord with Part 1206 of this chapter.

(ii) Choose to waive all or part of the sponsor's non-Federal cost-sharing deficiency; or

(iii) Reduce the amount of the currently approved Federal contribution to the RSVP project budget.

(g)(1) The budget period for RSVP grants may be shortened or lengthened by ACTION for administrative purposes. If the current budget period is shortened, the sponsor is obligated to honor the cost-sharing commitment, but only as a percentage of the total grant funds expended. The sponsor's cost-sharing commitment for a subsequent continuation grant shall be in accordance with the RSVP Cost-Sharing Schedule, except that the percentage will be reduced for a budget period by one percentage point for each month the sponsor's previous budget period was shortened.

(2) If during the first two years of a project, the budget period is lengthened to more than twelve months, the percentage of the sponsor's cost-sharing obligation will remain the same.

§ 1209.2-4 Awards.

(a) Within the limits of funds available for the Retired Senior Volunteer Program, the Director will award a grant to applicants whose proposals appears to serve the purposes of the program and this part. Awards will be in writing, specifying the amount of funds granted, and shall constitute for such amounts the encumbrance of Federal funds available for such purposes on the date of the award.

(b) The initial grant award will specify the project period for which support is contemplated if the activity is satisfactorily carried out and Federal funds are available. For continuation support, sponsors shall make separate application in accordance with the provisions of this part for each budget period.

(c) Awards will be made so as to achieve an equitable distribution of projects to the States from which applications eligible for funding are received.

§ 1209.2-5 Payments.

Payments under this part pursuant to a grant may be made (after necessary adjustment, due to previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions as the Director may determine.

§ 1209.2-6 Expenditures and fiscal procedures.

(a) All expenditures are to be made in accordance with the approved project budget and are subject to such limitations as are set forth in instructions issued by the Director.

(b) Payments received and expenditures made shall be fully recorded by or for the sponsor in accounting records separate from all other fund accounts, including funds derived from other grant awards.

(c) The sponsor shall provide or arrange for fiscal control and accounting procedures necessary to assure proper disbursement of, and accounting for, Federal funds received. Accounts and supporting documents relating to project expenditures shall be adequate to facilitate an accurate audit.

§ 1209.2-7 Audits.

All fiscal transactions relating to an award under this part are subject to audit by the Federal Government to determine whether or not expenditures have been made in accordance with the award and Federal requirements.

§ 1209.2-8 Records and reports.

The sponsor shall keep records and make reports as required and shall retain and afford access to the records in a manner determined necessary by the Director to allow for verification. The sponsor shall maintain accounting records for three (3) years after end of budget period or until resolution of any audit questions raised during such three-year period.

§ 1209.2-9 Termination.

A grant may be terminated in whole or in part at the discretion of the Director. Noncancellable obligations properly incurred prior to receipt of the notice of termination will be honored. The sponsor shall be promptly notified in writing of such termination and given reasons therefor.

Subpart C—Program Operation

§ 1209.3-1 Volunteer stations.

(a) Volunteer stations are agencies, organizations or institutions which receive senior volunteers from the Retired Senior Volunteer Program. Volunteer stations at which volunteers serve will be in the community where such persons live or in nearby communities. Volunteer services will be performed either on publicly owned and operated facilities or projects or on local projects sponsored by private non-profit organizations (other than political parties) other than projects involving construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place of religious worship.

(b) Volunteer stations to which RSVP volunteers are assigned by the project shall be party to a Memorandum of Understanding executed with the sponsor containing mutually agreeable provisions relating to functions and conditions of service of volunteers and to responsibilities of both the project and the volunteer station. The purpose of the Memorandum of Understanding is to promote cooperation, establish channels of communication, and avoid misunderstanding.

§ 1209.3-2 Advisory Council.

(a) A Retired Senior Volunteer Program Advisory Council shall be established for each project, prior to filing of the project application, to give advice on planning of the project and on drafting of the application and, after funding of the project, to give the sponsor support, assistance and advice on significant decisions and actions. Membership of the Advisory Council shall consist of representation from volunteer stations, specialists in the field of aging and voluntarism, representation from major private organizations and public agencies concerned with the best interests of older adults and volunteers, and other citizens of the community able to make a substantial contribution to the project, including persons competent in the field of service involved. At least one-fourth of the membership shall be persons aged 60 and over and must include RSVP volunteers. The Council shall have regularly scheduled meetings. Transportation costs for attendance at Council meetings subsequent to the grant award shall be reimbursed in the same manner as for transportation of the RSVP volunteers.

(b) The sponsor shall request assistance of the Council to coordinate activities of the project with other volunteer and older persons programs. The sponsor shall also request the Council to evaluate progress of the project at regular intervals.

§ 1209.3-3 Volunteers.

(a) Each RSVP project will be responsible for development of a variety of opportunities for useful service in the community commensurate with abilities, preferences and availability of senior volunteers from varied levels of income, education and experience.

(b) Eligibility requirements for service as a RSVP volunteer are that a person:

(1) Be retired and age 60 or over;

(2) Be physically and mentally able to serve;

(3) Accept supervision as required, and

(4) Commit the necessary time to carry out the assigned volunteer functions, usually a given number of hours on a regular basis.

§ 1209.3-4 Expenses of Volunteers.

Volunteers will not be compensated for their services. Reimbursement may be provided to RSVP volunteers for necessary out-of-pocket expenses incurred during, or as a result of, assigned volunteer activities in accord with allowable expense reimbursement prescribed in the Retired Senior Volunteer Program Operations Handbook.

§ 1209.3-5 Training of staff and volunteers.

The project budget shall include such short-term instruction or training as may be necessary to make the most effective use of the skills and talents of those persons who are participating in the administration of the project and volunteers, including payment of necessary and reasonable expenses of trainees incurred during training.

§ 1209.3-6 Safety standards.

Adequate standards of safety to protect older persons serving as RSVP volunteers at various volunteer stations shall be assured by the sponsor.

§ 1209.3-7 Insurance.

RSVP volunteers shall be provided insurance protection in relation to their volunteer assignments by the sponsor as established in the Retired Senior Volunteer Program Operations Handbook.

Subpart D—Contracts

§ 1209.4-1 Eligibility.

The Director is authorized to make contracts to carry out the purpose of this part with a public or private nonprofit agency or organization (other than the State agency).

§ 1209.4-2 Provisions.

Any contract under this part shall be entered into in accordance with and shall conform to all applicable laws, regulations, and agency policies.

§ 1209.4-3 Payments.

Payments for a contract under this part may be made in advance or by way of reimbursement and in such installments and on such conditions as the Director may determine.

PART 1210—VISTA TRAINEE DESELECTION AND VOLUNTEER EARLY TERMINATION PROCEDURES

Subpart A—General

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1210.1-1 Purpose.
1210.1-2 Scope.
1210.1-3 Definitions.

Subpart B—VISTA Trainee Deselection

1210.2-1 Grounds for deselection.
1210.2-2 Procedure for deselection.

Subpart C—VISTA Volunteer Early Termination

1210.3-1 Grounds for termination.
1210.3-2 Removal from project.
1210.3-3 Suspension.
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1210.3-5 Preparation for appeal.
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1210.3-7 Inquiry by Hearing Examiner.
1210.3-8 Termination file and Examiner's report.
1210.3-9 Decision by Director of VISTA.
1210.3-10 Reinstatement of Volunteer.
1210.3-11 Disposition of termination and appeal files.

Subpart D—National Grant Trainees and Volunteers

1210.4 Early termination procedures for National Grant Trainees and Volunteers.
APPENDIX A—STANDARD FOR EXAMINERS

AUTHORITY: Secs. 103(c), 402(14), Pub. L. 93-113, 87 Stat. 397 and 407.

SOURCE: 46 FR 35512, July 9, 1981, unless otherwise noted.

Subpart A—General

§ 1210.1-1 Purpose.

This part establishes procedures under which certain Trainees and Volunteers serving in ACTION programs under Pub. L. 93-113 will be deselected from training or termininated from service and how they may appeal their deselection or termination.

§ 1210.1-2 Scope.

(a) This part applies to all Trainees and Volunteers enrolled under Part A of Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended, (42 U.S.C. 4951 *et seq.*,) (hereinafter the "Act") and full-time Volunteers serving under Part C of Title I of the Act.

(b) This part does not apply to the medical separation of any Trainee or Volunteer. Separate procedures, as detailed in the VISTA Handbook, are applicable for such separations.

§ 1210.1-3 Definitions.

(a) "Trainee" means a person enrolled in a program under Part A of Title I of the Act or for full-time volunteer service under Part C of Title I of the Act who has reported to training but has not yet completed training and been assigned to a project.

(b) "Volunteer" means a person enrolled and currently assigned to a project as a full-time Volunteer under Part A of Title I of the Act, or under Part C of Title I of the Act.

(c) "Sponsor" means a public or private nonprofit agency to which ACTION has assigned Volunteers.

(d) "Hearing Examiner" or "Examiner" means a person having the qualifications described in Appendix A who has been appointed to conduct an inquiry with respect to a termination.

(e) "National Grant Program" means a program operated under Part A, Title I of the Act in which ACTION has awarded a grant to provide the direct costs of supporting VISTA Volunteers on a national or multi-regional basis. VISTA Volunteers may be assigned to local offices or project affiliates. The national grantee provides overall training, technical assistance and management support for project operations.

(f) "Local component" means a local office or project affiliate of a national grantee to which VISTA Volunteers are assigned under the VISTA National Grants Program.

(g) "Termination" means the removal of a Volunteer from VISTA service by ACTION, and does not refer to removal of a Volunteer from a particular project which has been requested by a sponsor or Governor under § 1210.3-2.

(h) "Deselection" means the removal of a Trainee from VISTA service by ACTION.

Subpart B—VISTA Trainee Deselection

§ 1210.2-1 Grounds for deselection.

ACTION may deselect a Trainee out of a training program for any of the following reasons:

(a) Failure to meet training selection standards which includes, but is not limited to, the following conduct:

(1) inability or refusal to perform training assignments;

(2) disruptive conduct during training sessions;

(b) Conviction of any criminal offense under Federal, State or local statute or ordinance;

(c) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;

(d) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer; or

(e) Refusal to accept Volunteer Placement.

§ 1210.2-2 Procedure for deselection.

(a) The Regional Director or designee shall notify the Trainee in writing that ACTION intends to deselect the Trainee. The notice must contain the reasons for the deselection and indicate that the Trainee has 5 days to appeal.

(b) The Trainee is placed on Administrative Hold at the time of the notice of deselection.

(c) The Trainee has 5 days after receipt of the notice to appeal in writing to the Regional Director, or designee specified in the notice, furnishing any supportive documentation. In the appeal letter, the Trainee may request an opportunity to present his or her case in person.

(d) If the Trainee does not respond to the notice, deselection becomes effective at the expiration of the Trainee's time to appeal.

(e) Within 5 days after receiving the Trainee's appeal, if no personal presentation is requested, the Regional Director or designee must issue a decision. If a personal presentation is requested, the Regional Director or designee must schedule it within 5 days, and must issue a decision 5 days after such presentation. In either case, the decision of the Regional Director or designee is final.

Subpart C—VISTA Volunteer Early Termination

§ 1210.3-1 Grounds for termination.

ACTION may terminate or suspend a Volunteer based on the Volunteer's conduct for the following reasons:

(a) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(b) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;

(c) Failure refusal or inability to perform prescribed project duties as outlined in the Project Narrative and/or volunteer assignment description and as directed by the sponsoring organization to which the Volunteer is assigned;

(d) Involvement in activities which substantially interfere with the Volunteer's performance of project duties;

(e) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer;

(f) Any conduct on the part of the Volunteer which substantially diminishes his or her effectiveness as a VISTA Volunteer; or

(g) Unsatisfactory performance of Volunteer assignment.

§ 1210.3-2 Removal from project.

(a) Removal of a Volunteer from the project assignment may be requested and obtained by a written request supported by a statement of reason by: (1) The Governor or chief executive officer of the State or similar jurisdiction in which the Volunteer is assigned or, (2) the sponsoring organization. The sole responsibility for terminating or transferring a Volunteer rests with the ACTION Agency.

(b) A request for removal of a Volunteer must be submitted to the ACTION State Director, who will in turn notify the Volunteer of the request. The State Director, after discussions with the Volunteer and in consultation with the Regional Director, if necessary, has 15 days to attempt to resolve the situation with the sponsor or the Governor's office. If the situation is not resolved at the end of the 15 day period, the Volunteer will be removed from the project and placed on Administrative Hold, pending a decision as set forth in paragraph (c) of this section.

(c) The State office will take one of the following actions concerning a Volunteer who has been removed from a project assignment:

(1) Accept the Volunteer's resignation;

(2) If removal was requested for reasons other than those listed in § 1210.3-1, ACTION will attempt to place the Volunteer on another project. If reassignment is not possible, the Volunteer will be terminated for lack of suitable assignment, and he or she will be given special consideration for reinstatement; or

(3) If removal from the project is approved based on any of the grounds for early termination as set forth in § 1210.3-1, the Volunteer may appeal the termination grounds as detailed in Subpart C of this Part to establish whether such termination is supported by sufficient evidence. If ACTION determines that the removal based on grounds detailed in § 1210.3-1 is not established by adequate evidence, then the procedures outlined in § 1210.3-2(c)(2) will be followed.

(d) A Volunteer's removal during a term of service may also occur as a result of either the termination of, or refusal to renew, the Memorandum of Agreement between ACTION and the sponsoring organization, or the termination or completion of the initial Volunteer assignment. In such cases, the Volunteer will be placed in Administrative Hold status while the Regional Office attempts to reassign the Volunteer to another project. If no appropriate reassignment within the Region is found within the Administrative Hold period, the Volunteer will be terminated but will receive special consideration for reinstatement as soon as an appropriate assignment becomes available. If appropriate reassignment is offered the Volunteer and declined, ACTION has no obligation to offer additional or alternative assignments.

§ 1210.3-3 Suspension.

(a) The ACTION State Director may suspend a Volunteer for up to 30 days in order to determine whether sufficient evidence exists to start termination proceedings against the Volunteer. Suspension is not warranted if the State Director determines that sufficient grounds already exist for the initiation of termination. In that event, the termination procedures contained in § 1210.3-4 will be followed.

(b) Notice of suspension may be written or verbal and is effective upon delivery to the Volunteer. Within 3 days after initiation of the suspension, the Volunteer will receive a written notice of suspension setting forth in specific detail the reason for the suspension. During the suspension period the Volunteer may not engage in project activities, but will continue to receive all allowances, including stipend.

(c) At the end of the suspension period, the Volunteer must either be reassigned to a project, or termination proceedings must be initiated.

§ 1210.3-4 Initiation of termination.

(a) Opportunity for Resignation. In instances where ACTION has reason to believe that a Volunteer is subject to termination for any of the grounds cited in § 1210.3-1, an ACTION staff member will discuss the matter with the Volunteer. If, after the discussion, the staff member believes that grounds for termination exist, the Volunteer will be given an opportunity to resign. If the Volunteer chooses not to resign, the administrative procedures outlined below will be followed.

(b) Notification of Proposed Termination. The Volunteer will be notified, in writing by certified mail, of ACTION's intent to terminate him or her by the ACTION State Director at least 15 days in advance of the proposed termination date. The letter must give the reasons for termination, and notify the Volunteer that he or she has 10 days within which to answer in writing and to furnish any affidavits or written material. This answer must be submitted to the ACTION State Director or a designee identified in the notice of proposed termination.

(c) Review and Notice of Decision. (1) Within 5 working days after the date of receipt of the Volunteer's answer, the State Director or designee will send a written Notice of Decision to the Volunteer by certified mail. (If no answer is received from the Volunteer within the time specified, the State Director or designee will send such notice within 5 days after the expiration of the Volunteer's time to answer.)

(2) If the decision is to terminate the Volunteer, the Notice will set forth the reasons for the decision, the effective date of termination (which, if the Volunteer has filed an answer, may not be earlier than 10 days after the date of the Notice of Decision), and the fact that the Volunteer has 10 days in which to submit a written appeal to the Regional Director.

(3) A Volunteer who has not filed an answer pursuant to the procedures outlined above is not entitled to appeal the decision or request a hearing and may be terminated on the date of the Notice.

(d) Allowances and Project Activities. (1) A Volunteer who files an answer within the 10 days allowed by 1210.3-4(b) with the State Director or designee following receipt of the notice of proposed termination, will be placed in Administrative Hold status, and may continue to receive regular allowances, but no stipend, in accordance with ACTION policy, until the appeal is finally decided. The Volunteer may not engage in any project related activities during this time.

(2) If the proposed termination is reversed, the Volunteer's stipend and any other allowances lost during the period of review will be reinstated retroactively.

§ 1210.3-5 Preparation for appeal.

(a) Entitlement to Representation. A Volunteer may be accompanied, represented and advised by a representative of the Volunteer's own choice at any stage of the appeal. A person chosen by the Volunteer must be willing to act as representative and not be disqualified because of conflict of position.

(b) Time for Preparation and Presentation. (1) A Volunteer's representative, if a Volunteer or an employee of ACTION, must be given a reasonable amount of time off from assignment to present the appeal.

(2) ACTION will not pay travel expenses or per diem travel allowances for either a Volunteer or the Volunteer's representative in connection with the preparation of the appeal, except to attend the hearing as provided in § 1210.3-7(c)(5).

(c) Access to Agency Records. (1) A Volunteer is entitled to review any material in his or her official Volunteer folder and any relevant Agency documents to the extent permitted by the Privacy Act and the Freedom of Information Act, (5 U.S.C. 552a; 5 U.S.C. 552). Examples of documents which may be withheld from Volunteers include references obtained under a pledge of confidentiality, official Volunteer folders of other Volunteers and privileged intra-Agency memoranda.

(2) A Volunteer may review relevant documents in the possession of a sponsor to the same extent ACTION would be entitled to review them.

§ 1210.3-6 Appeal of termination.

(a) Appeal to Regional Director. A Volunteer has 10 days from the Notice of Decision issued by the State Director or designee in which to appeal to the Regional Director. The appeal must be in writing and specify the reasons for the Volunteer's disagreement with the decision. The Regional Director has 10 days in which to render a written decision on the Volunteer's appeal, indicating the reason for the decision. In notifying the Volunteer of the decision, the Regional Director must also inform the Volunteer of his or her opportunity to request the appointment of a Hearing Examiner and the procedure to be followed.

(b) Referral to Hearing Examiner. If the Volunteer is dissatisfied with the decision of the Regional Director, the Volunteer has 5 days in which to request the appointment of a Hearing Examiner. The Regional Director must act on that request within 5 days. The Hearing Examiner must possess the qualifications specified in Appendix A to this Part, and may not be an employee of ACTION unless his or her principal duties are those of Hearing Examiner.

§ 1210.3-7 Inquiry by Hearing Examiner.

(a) Scope of Inquiry: (1) The Examiner shall conduct an inquiry of a nature and scope appropriate to the issues involved in the termination. If the Examiner determines that the termination involves relevant disputed issues of fact, the Examiner must hold a hearing unless it is waived by the Volunteer. If the Examiner determines that the termination does not involve relevant disputed issues of facts, the Examiner need not hold a hearing, but must provide the parties an opportunity for oral presentation of their respective positions. At the Examiner's discretion, the inquiry may include:

(i) The securing of documentary evidence;

(ii) Personal interviews, including telephone interviews;

(iii) Group meetings; or

(iv) Affidavits, written interrogatories or depositions.

(2) The Examiner's inquiry shall commence within 7 days after referral by the Regional Director. The Examiner shall issue a report as soon as possible, but within 30 days after referral, except when a hearing is held. If hearing is held, the Examiner shall issue a report within 45 days after the referral.

(b) Conduct of Hearing. If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

(1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making the decision.

(2) Ordinarily, attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with it. If requested by the Volunteer, the Examiner must open the hearing to the public.

(3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.

(4) Rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.

(5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.

(6) Testimony shall be under oath or affirmation, administered by the Examiner.

(7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who appear to testify.

(8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) Witnesses.

(1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her own initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least 10 days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination, or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expense and per diem at standard Government rates for the Volunteer and a representative to attend the hearing.

(6) The Examiner may authorize payment of travel expense and per diem at standard Government rates for other necessary witnesses to attend the hearing if he or she determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories or deposition at less cost.

(d) Report of Hearing. (1) The Examiner shall determine how any hearing shall be reported and shall have either a verbatim transcript or written summary of the hearing prepared, which shall include all pertinent documents and exhibits submitted and accepted. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings.

(2) If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. When agreed to in writing, the summary constitutes the report of the hearing. If the Examiner and the parties fail to agree on the hearing summary, the parties are entitled to submit written exceptions to any part of the summary, and these written exceptions and the summary will constitute the report of the hearing and shall be made part of the record of proceedings.

(3) The Volunteer may make a recording of the hearing at the Volunteer's own expense if no verbatim transcript is made.

§ 1210.3-8 Termination file and Examiner's report.

(a) Preparation and Content. The Examiner shall establish a termination file containing documents related to the termination, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The Examiner shall also prepare a report of findings and recommendations which shall be made part of the termination file.

(b) Review by Volunteer. On completion of the termination file, the Examiner shall make it available to the Volunteer and representative for review and comment before submission to the Director of VISTA. Any comments by the Volunteer or representative should be submitted to the Hearing Examiner for inclusion in the termination file not later than 5 days after the file is made available to them. The comments should identify those parts of the Examiner's report which support the appeal.

(c) Submission of termination file. Immediately upon receiving the comments from the Volunteer the Hearing Examiner shall submit the termination file to the Director of VISTA.

§ 1210.3-9 Decision by Director of VISTA.

The Director of VISTA shall issue a written decision, including a statement of the basis for the decision, within 10 days after receipt of the termination file. The decision of the Director of VISTA is the final Agency decision.

§ 1210.3-10 Reinstatement of Volunteer.

(a) If the Regional Director or Director of VISTA reinstates the Volunteer, the Regional Director may at his or her discretion reassign the Volunteer to the Volunteer's previous project or to another project. The Regional Director, in making such a decision, must request the Volunteer's views, but has the final decision on the Volunteer's placement.

(b) If the Volunteer's termination is reversed, stipend and other allowances lost during the appeal period will be paid retroactively.

§ 1210.3-11 Disposition of termination and appeal files.

All termination and appeal files shall be forwarded to the Director of VISTA after a final decision has been made and are subject to the provisions of the Privacy Act and Freedom of Information Act. No part of any successful termination appeal may be made part of, or included in, a Volunteer's official folder.

Subpart D—National Grant Trainees and Volunteers

§ 1210.4 Early termination procedures for National Grant Trainees and Volunteers.

Trainees and Volunteers serving in the National Grant Program as defined in § 1210.1-3(e) will be subject to the same termination procedure as standard VISTA Trainees and Volunteers with the following exceptions:

(a) For Trainees, the deselection procedure, [See § 1210.2-2] will be handled by the Project Manager in ACTION/Headquarters.

(b) The Initiation of termination, [See § 1210.3-4 (a) and (b)] will be handled by the VISTA Project Manager in ACTION/Headquarters, with the concurrence of the appropriate

State Director. The Review and Notice of Decision, [See § 1210.3-4(c)] will be handled by the VISTA Project Manager in ACTION/Headquarters.

(c) The Appeal of termination, [See § 1210.3-6(a)] will be handled by the Chief of VISTA Branch and not the Regional Director.

(d) The final decision on a Volunteer appeal will be made by the Director of VISTA as provided in § 1210.3-

APPENDIX A—STANDARD FOR EXAMINERS

(a) An Examiner must meet the requirements specified in either (1), (2), (3), or (4) below:

(1)(a) Current employment in Grades GS-12 or equivalent, or above;

(b) Satisfactory completion of a specialized course of training prescribed by the Office of Personnel Management for Examiners;

(c) At least four years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

—Identify and select appropriate sources of information; collect, organize, analyze and evaluate information; and arrive at sound conclusions on the basis of that information;

—Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practical recommendations or decisions on the basis of facts;

—Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

—Interpret and apply regulations and other complex written material;

—Communicate effectively orally and in writing, including the ability to prepare clear and concise written reports; and

—Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

—The relationship between Volunteer administration and overall management concerns; and

—The principles, systems, methods and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management's register for Hearing Examiner, GS-935-0.

(4) Membership in good standing in the National Academy of Arbitrators.

(b) A former Federal employee who, at the time of leaving the Federal service, was in Grade GS-12 or equivalent, or above, and who meets all the requirements specified for an Examiner except completion of the prescribed training course, may be used as an Examiner upon satisfactory completion of the training course.

PART 1211—VOLUNTEER GRIEVANCE PROCEDURES

Sec.

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APPENDIX A—STANDARDS FOR EXAMINERS

AUTHORITY: Secs. 104(d), 402(14), 420, Pub. L. 93-113, 87 Stat. 398, 407, and 414.

SOURCE: 45 FR 39271, June 10, 1980, unless otherwise noted.

§ 1211.1-1 Purpose.

This Part establishes procedures under which certain volunteers enrolled under Pub. L. 93-113 may present and obtain resolution of grievances.

§ 1211.1-2 Applicability.

This Part applies to all volunteers enrolled under Part A of Title I of the Domestic Volunteer Service Act of

1973, as amended, Pub. L. 93-113, (42 U.S.C. 4951 *et seq.*).

§ 1211.1-3 Definitions.

(a) "Volunteer" means a person enrolled and currently serving as a full-time volunteer under Part A of Title I of the Domestic Volunteer Service Act of 1973. For the purpose of this part, a volunteer whose service has terminated shall be deemed to be a volunteer for a period of 90 days thereafter.

(b) "Grievance" means a matter arising out of, and directly affecting, the volunteer's work situation, or a violation of those regulations governing the terms and conditions of service resulting in the denial or infringement of a right or benefit to the grieving volunteer. Terms and conditions of service refer to those rights and privileges accorded the volunteer either through statute, Agency regulation, or Agency policy.

(1) The relief requested must be directed toward the correction of the matter involving the affected individual volunteer or the affected group of volunteers and may request the revision of existing policies and procedures to ensure against similar occurrences in the future. Requests for relief by more than one volunteer arising from a common cause within one region may be treated as a single grievance. The following are examples of grievable matters:

(i) A volunteer is assigned to an area of harsh climate where special clothing is necessary and not already possessed by the volunteer. A request for a special allowance for such clothing is arbitrarily refused.

(ii) A volunteer submits a request for reimbursement for transportation costs incurred while on authorized emergency leave which is denied.

(iii) The project sponsor fails to provide adequate support to the volunteer necessary for that volunteer to perform the assigned work, such as the sponsor's failure to provide materials to the volunteer which is necessary for the performance of the volunteer's work.

(c) "State Program Officer" means that ACTION official who is directly responsible at the first level for the project in which the volunteer is serving.

(d) "Sponsor" means a public or private nonprofit agency to which ACTION has assigned volunteers.

(e) "Grievance Examiner" or "Examiner" means a person having the qualifications described in Appendix A who is appointed to conduct an inquiry or hearing with respect to a grievance.

(f) "National VISTA Grants Program" means a program operated under Part A. Title I of the Domestic Volunteer Service Act in which ACTION awards a grant to a national grantee to operate a VISTA Volunteer program on a national or multi-regional basis.

(g) "Local component" means a local office or project affiliate of a national grantee which has VISTA Volunteers assigned to it under the National VISTA Grants Program.

(h) The "Act" means the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, (42 U.S.C. 4951 *et seq.*), as amended.

§ 1211.1-4 Policy.

It is ACTION's policy to provide volunteers the widest latitude to present their grievances and concerns to appropriate officials of ACTION and of sponsoring organizations. This regulation is designed to assure that the rights of individual volunteers are recognized and to provide formal ways for them to seek redress with confidence that they will obtain just treatment.

§ 1211.1-5 Matters not covered.

Matters not within the definition of a grievance as defined in § 1211.1-3(b) are not eligible for processing under this procedure. The following are specific examples of excluded areas and are not intended as a complete listing of the matters excluded by this Part:

(a) The establishment of a volunteer project, its continuance or discontinuance, the number of volunteers assigned to it, increases or decreases in the level of support provided to a project, suspension or termination of a project, or selection and retention of project staff.

(b) Matters for which a separate administrative procedure is provided.

(c) The content of any law, published rule, regulation, policy or procedure.

(d) Matters which are, by law, subject to final administrative review outside ACTION.

(e) Actions taken in compliance with the terms of a contract, grant, or other agreement.

(f) The internal management of the ACTION Agency unless such management is specifically shown to individually and directly affect the volunteer's work situation or the terms and conditions of service as defined in § 1211.1-3(b).

§ 1211.1-6 Freedom to initiate grievances.

The initiation of a grievance shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that each supervisor and sponsor, as well as ACTION and its employees, maintain a healthy atmosphere in which a volunteer can speak freely and have frank discussions of problems. A volunteer who initiates a grievance shall not as a result of such an action be subjected to restraint, interference, coercion, discrimination or reprisal.

§ 1211.1-7 Entitlement to representation.

A volunteer may be accompanied, represented, and advised by a representative of the volunteer's own choice at any stage of the proceeding. The volunteer shall designate his or her representative in writing. A person chosen by the volunteer must be willing to act as representative and have no conflict between his or her position and the subject matter of the grievance.

§ 1211.1-8 Time for preparation and presentation.

(a) Both a volunteer and a volunteer's representative, if another volunteer or an employee of ACTION, must be given a reasonable amount of administrative leave from their assignments to present a grievance or appeal.

(b) ACTION will not pay travel expense or per diem travel allowances for either a volunteer or his or her representative in connection with the preparation of a grievance or appeal, except in connection with a hearing and the examination of the grievant file as provided in § 1211.1-12(c).

§ 1211.1-9 Access to agency records.

(a) A volunteer is entitled to review any material in his or her official volunteer folder and any relevant Agency documents to the extent permitted by the Freedom of Information Act and the Privacy Act, as amended, 5 U.S.C. 552, U.S.C. 552a. Examples of documents which may be withheld from volunteers include references obtained under a pledge of confidentiality, official volunteer folders of other volunteers, and privileged intra-agency documents.

(b) A volunteer may review relevant documents in the possession of a sponsor to the extent such documents are disclosable under the Freedom of Information Act and Privacy Act.

§ 1211.1-10 Informal grievance procedure.

(a) *Initiation of grievance.* A volunteer may initiate a grievance within 15 calendar days after the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. A grievance arising out of a continuing condition or practice that individually affects the volunteer may be brought at any time. A volunteer initiates a grievance by presenting it in writing to the chief executive officer of the sponsor, or the representative designated to receive grievances from volunteers. The designated representative may not be the immediate supervisor of volunteers assigned to the sponsor. The chief executive officer of the sponsor or the designated representative shall respond in writing to the grievance within five (5) working days after receipt. The chief executive officer or designee may not refuse to respond to a complaint on the basis that it is not a grievance as defined in § 1211.1-3(b), or that it is excluded from coverage under § 1211.1-5, but may, in the written response, refuse to grant the relief requested on either of these grounds.

If the grievance involves a matter over which the sponsor has no control, or if the chief executive officer is the immediate supervisor of the volunteer, the procedures described in this section may be omitted, and the volunteer may present the grievance in writing directly to the State Director or designee as described in paragraph (b) of this section within the time limits specified in this paragraph (a).

(b) *Consideration by ACTION State Director or designee.* If the matter is not resolved to the volunteer's satisfaction by the sponsor's chief executive officer, the volunteer may submit the grievance in writing to the ACTION State Director or designee within five (5) working days after receipt of the decision of the sponsor's chief executive officer. The State Director or designee may not refuse to receive a complaint, even if he or she believes it does not constitute a grievance, and shall respond to it in writing within five (5) working days after receipt. The response may indicate that the matter is not grievable. If the State Director or designee fails to meet the time limit for response, the volunteer may initiate a formal grievance.

(c) *Discussion.* All parties to the informal grievance procedure must be prepared to participate in full discussion of the grievance, and to permit the participation of others who may have knowledge of the circumstances of the grievance in the discussion. State Program Officers and other ACTION employees may participate in discussions and provide guidance with respect to ACTION policies and procedures, at the request of any party, even prior to submission of a grievance to them.

(d) *Sponsor grievance procedure.* A sponsor may substitute its own grievance procedure for the procedure described in paragraph (a) of this section. Any such procedure must provide the volunteer with an opportunity to present a grievance at least as comprehensive as that contained in this section, must meet the time limits of this section, and must be provided in writing to all volunteers. In order to utilize its own grievance procedures, the sponsor must obtain approval of the procedure from the ACTION State Director and file a copy of this approved procedure with the State Office.

§ 1211.1-11 Initiation of formal grievance procedure.

(a) *Submission of grievance to Regional Director.* If a volunteer is dissatisfied with the response of the State Director or designee required by § 1211.1-10(b), he or she may present the grievance in writing to the Regional Director. To be eligible for the formal grievance procedure, the volunteer must have completed action under the informal procedure contained in § 1211.1-10 or have alleged that the State Director or designee exceeded the time specified for response.

(b) *Contents of grievance.* The volunteer's grievance must be in writing, contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the volunteer or a person designated in writing by the volunteer to be the representative for the purpose of the grievance.

(c) *Time limit.* The volunteer must submit the grievance to the Regional Director or designee no later than 15 calendar days after receipt of the informal response by the State Director or designee. If no response is received by the volunteer 15 calendar days after the grievance is received by the State Director or designee, the volunteer may submit the grievance directly to the Regional Director or designee for consideration.

(d) *Within ten (10) working days of the receipt of the grievance, the Regional Director or designee shall, in whole or in part, either decide it on its merits or reject the grievance.* A grievance may be rejected, in whole or in part, for the following reasons:

(1) It was not filed within the time limit specified in paragraph (c) of this section, or

(2) The grievance consists of matters not contained within the definition of a grievance.

(e) *Rejection of a grievance by the Regional Director or designee may be appealed by the volunteer within ten*

(10) days of receipt of the notice to the Office of General Counsel. The Office shall immediately request the grievance file from the Regional Director and, within five (5) working days of receipt of it, determine the appropriateness of the rejection. If the grievance was properly rejected by the Regional Director, the Office shall so notify the volunteer of its opinion and the reasons supporting it, and that such rejection is the final Agency decision in the matter. If the Office determines that the grievance was improperly rejected, it shall return the grievance to the Regional Director for a determination on its merits by the Regional Director. Within ten (10) working days of such notification and receipt of the grievance file, the Regional Director or designee shall notify the volunteer in writing of the decision on the merits and specify the grounds for the decision and of the volunteer's right to appeal.

(f) *Time Limit.* If a volunteer is dissatisfied with the decision of the Regional Director or designee on the merits of the grievance, he or she shall notify the Regional Director within five (5) calendar days from receipt of the decision and request the appointment of an Examiner. If the volunteer receives no response from the Regional Director or Office of General Counsel as required by paragraph (d) and (e) of this section within five (5) calendar days after the prescribed time limits, the volunteer may request in writing that the Regional Director appoint a Grievance Examiner. Upon receipt of this request, the Regional Director or designee shall appoint within five (5) calendar days an Examiner who shall possess the qualifications specified in Appendix A to this part.

§ 1211.1-12 Investigation by Grievance Examiner.

(a) *Scope of investigation.* The Examiner shall conduct an investigation of a nature and scope appropriate to the issues involved in the grievance.

Unless waived by the volunteer, a hearing must be held if the Examiner finds that the grievance involves disputed questions of fact that go to the heart of the agency determination. Only those facts found necessary by the Examiner on which to base his or her findings go to the heart of the Agency determination.

If the grievance does not involve such disputed questions of fact, or if the volunteer waives a hearing, the Examiner need not hold a hearing but must provide the parties an opportunity for presentation of their respective positions. At the Examiner's discretion, the investigation may include:

(1) The securing of documentary evidence,

(2) Personal interviews, including telephone interviews,

(3) Group meetings,

(4) Affidavits, written interrogatories or depositions.

(b) *Conduct of Hearing.* If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

(1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making his or her decision.

(2) Attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with the grievance. If requested by the volunteer, the Examiner must open the hearing to the public.

(3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.

(4) Formal rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.

(5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.

(6) Testimony shall be under oath or affirmation, administered by the Examiner.

(7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who testify.

(8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) *Witnesses.* (1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least ten (10) calendar days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expenses and per diem at standard Government rates for the volunteer and the representative to attend the hearing. Payment of travel expenses and per diem at standard Government rates for other witnesses to attend the hearing are authorized only after the Examiner determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories, or deposition, at a lesser cost.

(d) *Recording of Hearing.* A grievant may make a recording of the hearing at his or her own expense if no verbatim transcript is made. Such a recording is in no way to be treated as the official transcript of the hearing.

(e) *Report of Hearing.* The Examiner shall normally prepare a written summary of the hearing which shall include all documents and exhibits submitted to and accepted by the Examiner during the course of the grievance. An Examiner may require a verbatim transcript if he or she determines that the grievance is so complex as to require such a transcript. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings. If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. In such cases, the summary together with exhibits shall constitute the report of the hearing. The parties are entitled to submit written exceptions to any part of the summary, and these written exceptions shall be made part of the record of proceedings.

§ 1211.1-13 Grievance file and examiner's report.

(a) *Preparation and content.* The Examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The file shall also contain the Examiner's report of findings and recommendations.

(b) *Review by volunteer.* On completion of the inquiry, the Examiner shall make the grievance file available to the volunteer and the representative, if any, for review and comment. Their coments, if any, shall be submitted to the Examiner within five (5) calendar days after the file is made available and shall be included in the file.

(c) *Examiner's report.* After the volunteer has been given an opportunity to review the grievance file, the Examiner shall submit the complete grievance file to the Director of VISTA.

§ 1211.1-14 Final determination by Director of VISTA.

The Director of VISTA or designee shall issue a written decision on the appeal to the volunteer within ten (10) working days after receipt of the appeal file. The decision shall include a statement of the basis for the determination, and shall be the final Agency decision.

§ 1211.1-15 Disposition of grievance appeal files.

All grievance appeal files shall be retained by the Director of VISTA after the grievance has been settled, or a final decision has been made and implemented. No part of a grievance or appeal file may be made part of, or included in, a volunteer's official folder.

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§ 1211.1-16 Grievance procedure for National VISTA Grant Volunteers.

The grievance procedure for National VISTA Grant Volunteers shall be the same as that provided in this part with the following substitutions of officials:

(a) Informal grievance procedure:

(1) The initiation of an informal grievance for a National Grant VISTA, see Section 1211.1-10, shall normally be to the sponsor of the local component. If the grievance involves a matter solely within the control of the ACTION State Office, the volunteer may present the grievance to the State Director or designee in lieu of the local component sponsor.

(2) If the volunteer is not satisfied with the response of the appropriate official (sponsor of local component, or State Director or designee), the volunteer may submit the grievance to the chief executive of the national grantee.

(b) Formal grievance procedure:

The Chief, VISTA Program Development Branch or designee shall replace the Regional Director as the official in § 1211.1-11.

APPENDIX A—STANDARDS FOR EXAMINERS

An examiner must meet the requirements specified in either (1), (2), (3), or (4) below:

(1) Current or former federal employees now or formerly in grade GS-12 or equivalent, or above who have:

(a) At least four (4) years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

Identify and select appropriate sources of information; collect, organize, analyze, and evaluate information; and arrive at sound conclusions on the basis of that information;

Analyze situations; make an objective and logical determinationn of the pertinent facts; evaluate the facts; and develop practicable recommendations or decisions on the basis of facts;

Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

Interpret and apply regulations and other complex written material;

Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and

Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

The relationship between volunteer administration and overall management concerns; and

The principles, systems, methods, and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management register for Examiners GS-935-0.

(4) Membership in good standing in the National Academy of Arbitrators.

PART 1212—VOLUNTEER AGENCIES PROCEDURES FOR NATIONAL GRANT VOLUNTEERS—[RESERVED]

PART 1213—ACTION COOPERATIVE VOLUNTEER PROGRAM

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1213.7-3 Firearms.

AUTHORITY: Secs. 121, 122, 402 (12) and (14) and 420 of Pub. L. 93-113, 87 Stat. 395, 400, 401, 407 and 414.

SOURCE: 40 FR 10670, Mar. 7, 1975, unless otherwise noted.

Subpart A—General

§ 1213.1-1 Introduction.

(a) Section 122(a), Part C, of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93-113, 87 Stat. 401, authorizes the Director of ACTION to conduct and to make contracts for special volunteer programs to encourage wider volunteer participation on a full-time basis to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty. The ACTION Cooperative Volunteer Program (ACV) is one of these special volunteer programs. It provides full-time volunteer service opportunities for individuals in assignments with nonprofit and public agency sponsors involving a broad range of human, social, and environmental needs, particularly those related to poverty. Organizations wishing to become sponsors enter into an agreement with ACTION to share expenses associated with ACV volunteer assignments. The sponsor's share consists of reimbursing ACTION for the direct costs of volunteer support, i.e. allowances, stipend and other direct benefits.

(b) Section 122(b) requires that the assignment of ACV volunteers be on such terms and conditions as the Director shall determine.

(c) Section 122(c) provides that the Director may provide to persons serving as full-time volunteers in a program of at least one year's duration such allowances and stipends as he determines are necessary. The kinds and amount of such allowances and stipends may not exceed those authorized to be provided to VISTA volunteers (Part A, Title I, Pub. L. 93-113).

Subpart B—Description of Volunteer Service

§ 1213.2-1 Enrollment and duration of service.

ACTION enrolls an individual in ACV during the preservice processing it provides. Such enrollment is for a period comprising the time of such processing, ACTION preservice orientation, and a one-year assignment to a project.

§ 1213.2-2 Provisional volunteers.

Individuals are considered to be provisional volunteers during the period of pre-service processing and ACTION preservice orientation. They have all the rights and benefits and are subject to all the duties of volunteers, except as expressly provided in these regulations or where it would appear from the language of a section of the regulations to be inappropriate.

§ 1213.2-3 Extension of service and reenrollment.

In certain situations, a volunteer may have his period of volunteer service extended for not more than one year, at the request of a sponsor and the concurrence of the appropriate ACTION Regional Director.

A volunteer may only be reenrolled for a period of at least one year. A sponsor must request the reenrollment and it must be approved by the appropriate ACTION Regional Director. No volunteer may serve for more than a total of five years in full-time volunteer programs under Title I of Pub. L. 93-113.

Such extensions and reenrollments may be for the same or different projects and may include interregional and intraregional transfers.

§ 1213.2-4 Living conditions.

To the extent practicable volunteers are expected to make a personal commitment to live among and at the economic level of the people served by the project in which the volunteer works. The sponsor will insure that this commitment is observed.

§ 1213.2-5 Role of the volunteer.

The volunteer's assignments are carried out under the auspices of the sponsor. The volunteer assumes a "live-in" obligation carrying his work into all facets of community life and social activity. He is available for service without regard to regular working hours seven days a week, except for periods of approved leave.

Subpart C—ACTION Provided Volunteer Support

§ 1213.3-1 Financial support.

(a) *Food and lodging.* Each ACV volunteer receives from ACTION a food and lodging allowance approximately commensurate with the actual standard of living of the residents of the community to which he is assigned. The amount of this allowance is determined by the Regional Office after consultation with the sponsor.

(b) *Personal living allowance.* ACTION also provides each volunteer a personal living allowance of $75 per month. It is intended to cover incidental expenses and local travel.

(c) *Adjustment allowance.* At the beginning of service, a volunteer may receive from ACTION an adjustment allowance when necessary to cover the initial cost of securing and setting up living quarters. Such an allowance is usually provided only to volunteers who serve outside their home area. It is not usually available to volunteers recruited locally for an assignment in their home or nearby communities.

(d) *Stipend.* At the conclusion of the term of service, each volunteer receives a stipend of $50 for each month of service on an ACV project. Volunteers may be authorized to make biweekly allotments from the stipend, not in excess of $12.50, in extraordinary circumstances. These may include allotments for obligations incurred prior to service for family support, insurance or loan payments and income taxes.

(e) *Provisional volunteers.* Provisional volunteers do not receive any allowances nor do they accrue stipends. During the period they are provisional volunteers their food and lodging is provided by ACTION and they receive a nominal amount of money for living expenses.

(f) *Emergencies.* In case of emergencies, ACTION may provide the volunteer with assistance and support to prevent injury or hardship to him, including a $500 advance against allowances and stipends due the volunteer or to be paid subsequently to him during his volunteer service.

(g) *No dependent support.* ACTION assumes no financial responsibility for a non-volunteer spouse, a volunteer's children or other dependents.

§ 1213.3-2 Transportation.

ACTION will be responsible for providing the volunteer with needed transportation for the following purposes:

(a) To, and when appropriate, from volunteer/sponsor staging;

(b) To the pre-service processing site, whether it is the ACTION Regional Office or any other designated facility;

(c) To the project site following completion of pre-service processing, and at the beginning of the volunteer's terms of service;

(d) For the return trip from the projects site to the volunteer's home of record following completion of service;

(e) Whenever necessary to enable the volunteer to travel outside the geographic area to which he has been assigned when he does so at the request of the Government;

(f) When approved in cases of emergency.

For the purpose of paragraph (d) of this section, the term "home of record" shall be either:

(1) The legal residence of the volunteer's parent or legal guardian if the volunteer had been residing with the parent or legal guardian immediately prior to entering ACTION service, or if the volunteer was a full-time student whose permanent residency was with the parent or legal guardian.

(2) The residence established by the volunteer while attending college immediately prior to entering ACTION.

(3) The residence established by the volunteer while employed immediately prior to entering ACTION.

(4) The legal residence established by the volunteer for purposes of voting and/or payment of state tax.

Each volunteer must specify a home of record at the time he is enrolled. Subsequent modification of the home of record may be authorized in certain circumstances at the discretion of the Regional Director.

§ 1213.3-3 Health support.

ACTION provides ACV volunteers with a health benefits program at no cost to the volunteers.

Coverage includes most medical and surgical costs, hospitalization, prescription drugs, and emergency dental care. ACTION reserves the right to alter the extent, or the method of providing health care for volunteers. In nonemergency situations, the Regional Office must clear hospitalization or other serious (in excess of $150) treatments.

§ 1213.3-4 Legal support.

ACTION will pay certain legal expenses where volunteers are involved in criminal or civil judicial or administrative proceedings to the extent provided in Part 1220.

§ 1213.3-5 Insurance.

(a) ACV volunteers are covered by the Federal Employees Compensation Act. This provides a broad-based workmen's compensation-type coverage for volunteer job-related accidents and occupational sickness.

(b) ACV volunteers are also Federal employees for the purpose of the Federal Tort Claims Act. Any third-party claims for injury or damage to property arising out of the volunteer's job-related activities will be treated as claims against the United States.

§ 1213.3-6 Leave.

(a) *Vacation leave.* Once on the job for four months, an ACV volunteer earns one day of leave for each full month of service up to a maximum of seven days, including one weekend. No leave is to be granted during the last month of service, except for emergencies. During leave, the volunteer's regular support allowances are continued. No leave may be taken without the approval of the sponsor.

(b) *Emergency leave.* Should a member of a volunteer's immediate family—spouse, mother, father, sister, brother, child or guardian—become critically ill or die, emergency leave may be granted by the sponsor for a period of up to one week. Any additional time requires the approval of the ACTION Regional Office. It does not count against vacation leave. The volunteer will be paid for transportation by the fastest scheduled carrier to and from the emergency site and for actual travel expenses incurred, but not in excess of those authorized in standard government travel regulations.

§ 1213.3-7 Federal service.

Section 415(c) of the Act provides that should an ACV volunteer subsequently enter Federal service, his period of volunteer service counts as a like period of Federal service for certain purposes, including job security and retirement benefits.

§ 1213.3-8 Lost property.

(a) The Regional Director may at his discretion reimburse volunteers or trainees for or replace lost, damaged, or stolen property; cash representing certain allowances; and equipment and supplies if, (1) reimbursement is essential to the volunteer's capacity to serve effectively in his particular assignment for the duration of his service, and (2) the loss, damage, or theft did not result from the volunteer's negligence.

(b) Lost or stolen cash may be reimbursed only if it represents the volunteer's food and lodging or living allowance or other payments essential to the volunteer's service. Lost or stolen cash representing payment of stipend or vacation allowances will not be reimbursed.

(c) No reimbursement will be made for luxury items, such as photographic or phonographic equipment or jewelry.

Subpart D—Sponsor Provided Volunteer Support

§ 1213.4-1 Training.

(a) The sponsor is fully responsible for designing and implementing a program of in-service training which will completely equip the volunteer to perform the tasks to which he has been assigned.

(b) In-service training will be conducted by the sponsor in accordance with plans agreed upon during the program development process, and submitted to ACTION as part of the agreement. Those plans must be tailored to the volunteer's needs for additional skills and information in the performance of assigned tasks.

§ 1213.4-2 Supervision.

The sponsor has the sole responsibility for providing appropriate supervision, leadership, and direction to the volunteers in conformance with the plan prepared in cooperation with ACTION and submitted with the project proposal. The plan is to be executed in such a manner that the volunteers can attain project goals within the proposed time frame.

§ 1213.4-3 Job-related transportation.

The sponsor is responsible for determining the job-related transportation needs of the volunteer. The volunteers are expected to use public transportation in connection with their work whenever it is available and adequate. When it is not, the sponsor shall provide suitable private transportation, including obtaining and maintaining motor vehicles for the job-related use of the volunteers as appropriate. Whether the sponsor purchases vehicles or obtains them through a leasing arrangement, he is responsible for monitoring the use of those vehicles and restricting the use of transportation provided to volunteers to work on the project. The volunteer and the sponsor are jointly responsible for compliance with all state and local laws concerning vehicle registration, operator licensing, and financial responsibility on any private vehicles used by the volunteer, either as part of his work assignment or for personal convenience.

§ 1213.4-4 Supplies and equipment and office facilities.

The sponsor is responsible for providing most job-related support involving facilities, equipment, and consumable supplies needed by the volunteer, including telephone and secretarial support.

§ 1213.4-5 Emergencies.

In case of emergencies in which it is not possible for ACTION to provide a volunteer with the necessary assistance and support in time to prevent injury or hardship to him, the sponsor may furnish the needed assistance, including an advance of up to $500 from its own funds to the volunteer. Such advances, however, should be cleared in advance by telephone with the ACTION Regional Director or designee.

Subpart E—Administrative Hold—Grievances, Removal, Resignation, Suspension and Termination

§ 1213.5-1 Administrative hold.

(a) Volunteers will be placed in Administrative Hold Status under the following circumstances:

(1) No placement after training.

(2) Pending transfer to a new project.

(3) Leave taken for personal reasons in excess of the seven days for vacation leave, seven days for emergency leave, seven days for extension beyond three months, and fourteen days for reenrollment.

(4) Absence from project site without authority of the sponsoring organization.

(5) During termination action.

(6) Arrest and placement in jail without bail, depending on nature of charges.

(7) Removal from site at request of sponsoring organization, pending decision on transfer to new assignment.

(b) Exceptions to these guidelines must be authorized by the Regional Director. Volunteers may be placed in Administrative Hold status for up to 30 days. In exceptional circumstances, the Regional Director may extend this period of time as appropriate. The Regional Director may modify any and all allowances, including stipend, when a volunteer is placed in Administrative Hold status.

§ 1213.5-2 Volunteer grievances.

(a) At times, a volunteer will consider that he has been adversely affected in some matter arising out of his work situation or the terms and conditions of his service. The Volunteer Grievance Procedure, Part 1211, furnished to each volunteer, applies to certain of these matters. This procedure is applicable to situations in which the volunteer believes there has been a deviation from, misinterpretation or misapplication of laws, regulations, policies or procedures governing his service.

(b) The Grievance Procedure establishes a formal and informal mechanism to resolve such problems. The informal mechanism aims to resolve disputes at the level of the sponsor and the state program officer. The formal part of the Grievance Procedure provides a hearing in certain cases and includes appeals to ACTION's national office in Washington.

(c) The procedure that the sponsor employs at the informal stage of the ACTION Grievance Procedure will also be used for any disputes between the sponsor and a volunteer not involving a law or regulation or an ACTION policy and procedure.

§ 1213.5-3 Resignation.

A volunteer may resign at any time, by notifying the sponsoring organization and the Regional Office. When practicable, thirty days advance notice should be given to insure that the departure will be only minimally disruptive to the project. In case of resignation, all outstanding advances, including unearned vacation allowances, are deducted from the volunteer's stipend. The volunteer receives his final stipend check three to five weeks after regional submission of the termination papers to ACTION/Washington.

§ 1213.5-4 Sponsor request for removal of volunteer.

The sponsoring organization may request ACTION to remove a volunteer whose performance in its view is unsatisfactory at any time. Before resorting to a formal request for removal the sponsor should contact the appropriate ACTION state official to seek help in trying to resolve any problem with a volunteer. The sponsor may then prepare a written request for removal and submit it to the Regional Office. ACTION may, depending on the circumstances, follow one of three courses of action: (a) Suspend the volunteer, (b) terminate him, or (c) transfer him to another project.

§ 1213.5-5 Suspension and termination.

(a) *Causes.* ACTION may suspend or terminate a volunteer for any of the following reasons:

(1) Conviction of any criminal offense under Federal, state, or local statute or ordinance;

(2) Violation of any provision of the Domestic Volunteer Service Act of

1973, or any ACTION policy, regulation or instruction;

(3) Failure, refusal or inability to perform prescribed project duties as outlined in the project proposal and directed by the sponsoring organization to which the volunteer is assigned;

(4) Involvement in activities which substantially interfere with the volunteer's performance of his/her duties on the project;

(5) Intentional false statement, omission, fraud, or deception in obtaining selection as a volunteer;

(6) Any conduct on the part of the volunteer which substantially diminishes his/her effectiveness as a volunteer;

(7) Inability to perform the project duties because of serious illness, medical disability, or pregnancy, as determined by the attending physician, in accordance with ACTION policy;

(8) Lack of a viable job for which the volunteer is qualified if the initial job assignment ends or is terminated prior to completion of a period of service;

(9) Unsatisfactory job performance. Procedures for the suspension and termination of volunteers are contained in Part 1210.

(b) *Suspension.* Volunteers may be suspended for up to 30 days to enable ACTION to determine whether termination proceedings should be started against the volunteer. Suspension is not warranted if sufficient evidence exists to start termination proceedings.

(c) *Termination of or refusal to renew ACTION/sponsoring organization agreement.* If the Memorandum of Agreement between ACTION and a sponsoring organization is terminated or not renewed, a volunteer who is removed from the project and whose removal was not caused by conduct which would otherwise be grounds for termination is entitled to the following administrative considerations:

(1) Reassignment to another project where possible.

(2) If reassignment is not possible at the time of project close-out, and if the volunteer wishes to resume service (provided that his/her job performance has been satisfactory), he/she may, at the discretion of the Regional Director, receive special consideration for reinstatement as soon as an appropriate slot is open.

If a volunteer wishes, he/she may terminate without prejudice in the event that a Memorandum of Agreement between ACTION and the sponsor is terminated.

(d) *Deselection of a provisional volunteer.* The Regional Director may deselect a provisional volunteer on the grounds listed in paragraph (a) of this section or for a failure to meet training or selection standards during preservice orientation. Procedures for such deselection are contained in Part 1210.

[40 FR 10670, Mar. 7, 1975; 46 FR 6951, Jan. 22, 1981]

Subpart F—Special Conditions Affecting Volunteer Service

§ 1213.6-1 Sponsor's employment of volunteer.

ACV volunteers make a commitment to one full year of ACTION service. Similarly, ACTION asks that the sponsor on his part must honor the spirit of that commitment and refrain from offering fully paid employment to volunteers during their first year of service. Volunteers may not perform services or duties or engage in activities for which the sponsor receives or requests any compensation. Volunteers may not receive any other compensation, directly or indirectly, from a sponsor while serving as a volunteer.

§ 1213.6-2 Nondisplacement of employees and impairment of contracts of service.

An ACV volunteer's assignment is limited to activities that would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service. (Part 1216 implements this provision.)

§ 1213.6-3 Nonappropriate assignments.

(a) An assignment is not appropriate for a volunteer if:

(1) The service, duty, or activity is principally administrative or clerical, or

(2) The volunteer is not directly in contact with groups or individuals who are to be served by the project or is not performing services, duties, or engaged in activities which are authorized under section 122(a) of the Act.

§ 1213.6-4 Political activities and limitation of unlawful activities.

(a) ACV volunteers are covered by the Hatch Act to the same extent as Federal employees. This Act prohibits volunteers from engaging in partisan political activities of any sort at any and all times during their terms of service, including periods of official leave.

(b) Section 403 of Pub. L. 93-113 requires that a sponsor's project be operated in such a manner as to avoid involvement of ACV volunteers in any partisan or nonpartisan political activity in an election for public or party office, voter transportation during elections, and voter registration drives.

(c) While engaged in carrying out their duties volunteers may, as a part of the project, participate in lawful and nonpolitical demonstrations and protest activities which are approved by the sponsor as a part of its project activity and which are not in violation of any ACTION policies.

§ 1213.6-5 Nondiscrimination.

Part 1203 provides regulations concerning nondiscrimination in ACTION programs and activities.

(a) No person with responsibilities in the operation of an ACV project shall discriminate with respect to such program because of race, creed, belief, color, national origin, sex, age, or political affiliation.

§ 1213.6-6 Religious activities.

Volunteers will not give religious instruction, conduct worship services, or engage in any other religious activity as part of their duties. Volunteers who serve in an institution that gives religious instruction or engages in other religious activities will not be used as replacements for regular personnel of the institution. For example, volunteers assigned to serve in a program conducted under the auspices of a church-related school may not be used as substitutes for regular teachers in the school. They may, however, work in new programs which are carried on in addition to the school's regular programs and which are conducted in conformance with the above restrictions.

§ 1213.6-7 Evaluation.

(a) On a quarterly basis and two months prior to the termination of a volunteer's year of service, and at any other time which circumstances may dictate, ACTION may inspect that portion of a project with which the volunteer is involved. The purpose of the inspection will be to independently observe and judge the extent to which the volunteer's work has contributed to the objectives of the program described in the project proposal.

(b) The sponsor is expected to cooperate fully with ACTION representatives, and ACTION will in turn review results of the evaluation with the sponsor.

§ 1213.6-8 Limitation on labor and anti-labor activities.

Volunteers may not engage in any activities, services, or duties which assist any labor or anti-labor organizing activity, or related activity.

§ 1213.6-9 Loans and debts.

(a) ACVs have the same legal and financial responsibilities as do all other persons. Volunteers are encouraged to pay all legal debts promptly to avoid creating a situation which would impair the volunteer's ability to function. In cases of continued financial irresponsibility by a volunteer to the extent of embarrassment or adverse reflection upon the sponsor organization's project or ACTION, administrative or disciplinary action may be taken by the Regional Office, up to and including termination, where appropriate.

(b) Volunteers are not authorized to obtain extension of credit by representing themselves as a Federal Government employee.

Subpart G—Miscellaneous

§ 1213.7-1 Student loan deferrals.

(a) The Higher Education Act of 1965, as amended, exempts full-time domestic volunteers from repayment of National Defense Education Act loans for a period of service not to exceed three years. Volunteers wishing to defer repayment of NDEA loans must obtain the necessary forms from their universities. Regional Offices are authorized to certify these forms, but if the university or volunteer should submit the form to Headquarters for certification, it will be sent to the appropriate Regional Office for completion.

(b) If the volunteer is still in service at the time of ACTION's certification, his anticipated termination date will be furnished to the lender.

(c) Repayment of other college loans may also be deferred. These repayments, however, are deferred at the discretion of the lender. If the lender is willing to defer payment, volunteers must obtain the necessary forms from the lender and forward them to the Regional Office for certification. If forms are not available from the lender, a letter to the university or lender may be prepared certifying the dates of the volunteer's service.

§ 1213.7-2 Death benefits.

In case of the death of a volunteer away from his home of record, certain costs associated with transportation of the body are reimbursable either under the Federal Employees Compensation Act or ACTION policy. Volunteers whose death results from personal injury or illness sustained in the performance of his project duties are eligible for reimbursement of certain funeral expenses. Monthly benefits for eligible dependents of deceased volunteers may be available under the Federal Employees Compensation Act. In certain other unusual circumstances, payment of certain funeral expenses for volunteers not meeting the above requirements may be authorized.

§ 1213.7-3 Firearms.

ACTION volunteers may not normally possess, use, or carry firearms. If a volunteer wishes to keep firearms for hunting, approval must be obtained from the sponsor, State Program Director and the ACTION Regional Director in the region where the volunteer is assigned. The volunteer must request approval for possession or use of firearms from his sponsor and his State Program Director. If he receives their approval, his request may then be considered by his ACTION Regional Director. If approval is granted by the ACTION Regional Director, the volunteer must adhere to all state and local regulations relating to the possession and use of firearms.

PART 1215—INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH PUBLIC INFORMATION ACT

Sec.
1215.1 Purpose.
1215.2 Definitions.
1215.3 Records generally available.
1215.4 Availability of records.
1215.5 Records which may be exempt from disclosure.
1215.6 Manner of requesting records—Appeals.
1215.7 Authority to release and certify records.
1215.8 Location of records.
1215.9 Identification of records.
1215.10 Schedule of fees.

AUTHORITY: Sec. 412, Pub. L. 93-113, 87 Stat. 411 (5 U.S.C. 552).

SOURCE: 40 FR 18558, Apr. 29, 1975, unless otherwise noted.

§ 1215.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, staff manuals, instructions, and other records of ACTION pursuant to 5 U.S.C. 552.

§ 1215.2 Definitions.

As used in this part, the following definitions shall apply:

(a) "The Agency" means ACTION.

(b) "Records" includes all books, papers, maps, photographs, or other documentary material or copies thereof, regardless of physical form or characteristics, made in or received by ACTION and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities, but does not include books, magazines, or other materials acquired solely for library purposes and available to any officially designated library or the agency.

(c) "Identifiable" means, in the context of a request for a record, one which is reasonably described in a manner sufficient to permit the location of the material requested.

(d) "Unit" means an office of the Agency headed by a senior official who shall be responsible for making initial determinations of availability of documents or records requested hereunder. The head of any such Unit may delegate his responsibility hereunder to his Deputy or some other official during any absence of such official. At present, the units of the Agency for the purposes hereof consist of, the Office of the Director; the Office of Domestic and Anti-Poverty Operations; the Office of International Operations; the Office of Policy and Planning; the Office of Administration and Finance; the Office of General Counsel; the Office of Congressional Affairs; the Office of Minority Affairs; the Office of Recruitment and Communications, the ten domestic regional offices, and the three regional offices in the Office of International Operations.

§ 1215.3 Records generally available.

The agency will make promptly available to any member of the public the following documents:

(a) All final opinions and orders made in the adjudication of cases;

(b) Statements of policy and interpretation adopted by the office which have not been published in the FEDERAL REGISTER;

(c) Administrative staff manuals and instructions to the staff which affect a member of the public;

(d) A current index, which shall be updated at least quarterly covering so much of the foregoing materials as may have been issued, adopted or promulgated after July 4, 1967 is maintained by the Agency and copies of same or any portion thereof shall be furnished upon request at a cost not to exceed the cost of duplication. The Agency deems further publication of such index in the FEDERAL REGISTER both unnecessary and impractical.

(e) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(f) Brochures, flyers and other similar material shall be furnished to the extent that same are available copies of any such brochures and flyers which are out of print shall be furnished upon request at the cost of duplication, provided, however, that in the event no copy exists, the Agency shall not be responsible for reprinting the same.

(g) The Agency will not be required to create or compile selected items from its file and records or to provide a requester with statistical or other data unless such data has been compiled by the Agency and is available in the form of a record in which event such record shall be made available as provided in this part.

§ 1215.4 Availability of records.

All records of ACTION, in addition to those ordinarily maintained and disseminated under § 1215.3 hereof requested under 5 U.S.C. 522(a)(3) and reasonably described in any request therefor shall be made promptly available upon request of any member of the public for inspection or copying upon compliance with procedures established in this part except to the extent that a determination is made, in accord with the procedures set forth herein, that a record is exempt from disclosure, and should be withheld in the public interest. All publications and other documents heretofore provided by ACTION in the normal course of business will continue to be made available upon request to the appropriate unit of the agency. No charge will be made for such documents unless necessary by reason of the fact that such document is no longer in print in which case the charge shall not exceed the cost of duplication as set forth herein.

§ 1215.5 Records which may be exempt from disclosure.

The following categories are examples of records maintained by ACTION which, under the provisions of 5 U.S.C. 552(b) may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 11652, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) Interagency or intra-agency memoranda or letters which would not ordinarily be available by law to a party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former volunteers, and volunteers, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would violate a pledge of confidentiality and amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory files. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and ajudicative proceedings, provided however, that such records shall be made available to the extent that their production will not (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by a confidential source; (5) disclose investigative techniques and procedures; or (6) endanger the life or physical safety of law enforcement personnel.

(h) In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section.

(i) Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information might pertain, and that disclosure is not prohibited by law or Executive Order.

§ 1215.6 Manner of requesting records—Appeals.

(a) Requests under the Freedom of Information Act (5 U.S.C. 552) for access to ACTION records may be filed in person or by mail with the Director of Administrative Services of the aforesaid at ACTION headquarters, 806 Connecticut Avenue NW., Washington, D.C. 20525. Requests for records of a domestic regional or state office may be filed in person or by mail with the records officer of the respective Domestic Regional Office. All requests and the envelope in which they are sent must be plainly marked

"FOI Request". Personal requests will be received from between 10 a.m. and 4 p.m., Monday through Friday, except for official holidays.

(b) Requested records which are reasonably described shall either be made available within ten working days after receipt of any such request or a written notice that the request cannot be complied with shall be provided to the person making such request within such 10 day period. Any such notice of inability to comply shall specify the reasons for refusal and the right of the person making such request to appeal such adverse determination. In the event a request for a record or document is made to a Regional Records Officer of the Agency or to the Director of Administrative Services, and such office does not have the requested material, the requester shall be immediately so notified. Such notice shall specify the Regional or other office of the Agency where such material is to be found or where it is normally maintained. The requester may then resubmit his request, or request the office which provides the notice to forward the original request to the proper Domestic Regional Office or the central office as may be appropriate. The request shall be deemed received when actually received by the appropriate office.

(c) Upon receipt of a notice of failure to comply, a person making a request for information, records, or documents may, within 15 calendar days from the receipt of such notice, appeal such adverse determination to the Deputy Director of ACTION. Such appeal shall be in writing and shall specify the date upon which the notice of failure or refusal to comply was received by the person making such request. The Deputy Director shall make determination with respect to such appeal within 20 working days after receipt of such appeal. Notice of such determination shall be provided to the person making the request in writing. If the original denial of the request for records is upheld in whole or in part, such notice shall include notification of the right of the person making such request to have judicial review of the denial and appeal as provided under the Freedom of Information Act (5 U.S.C. 552).

(d) The time limits specified above for initial compliance, and appeal from a refusal to comply, may be extended by the Agency upon written notice to the person making such request which notice shall set forth the reasons for such extension and the date upon which determination is expected. Such extension may be applied at either the initial stage or the appellate stage, or both, provided that the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension shall include the following:

(1) Time necessary to search and collect requested records from segments of the agency separate from the office processing the request;

(2) Time necessary to search, collect and appropriately examine a voluminous number of records demanded in a single request; or

(3) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency which have an interest in the subject matter of the request.

(e) The time limits provided in this section are mandatory and a person requesting records shall be deemed to have exhausted his administrative remedies with respect to such request in the event the Agency fails to comply within the said applicable time limit provisions as extended in accord with this section. In unusual circumstances in which additional time is necessary to collect and review the records requested, the Act provides that a court of appropriate jurisdiction may allow the agency additional time for such purpose. Alternatively, the Agency and the person making such request may agree as to a reasonable time for completion of Agency work upon such request.

(f) Any notification of denial of any request for record under this subsection shall set forth the names and titles or positions of the person primarily responsible for the denial of such request.

(g) Upon receipt of a request for a record or document the Director of the Office of Administrative Services or the Regional Records Officer will promptly make an initial determination as to whether the request for the record reasonably describes such record with sufficient specificity to determine the unit of the Agency to which such request should be referred. Upon making such initial determination, he shall immediately refer such request to the head of the unit concerned. Upon receipt of the request the head of the unit shall promptly determine whether the description of the record contained in the request is sufficient to permit its identification and production.

(h) If the Director of Administrative Services, the Regional Records Officer or the head of the unit concerned determines that the description contained in the request is not sufficient to reasonably describe the record requested, the requester shall be so advised and shall be permitted to amend the request to provide any additional information which would better identify the record. The requester shall be provided with appropriate assistance from the head of the unit concerned, the Director of Administrative Services, the Regional Records Officer or any member of their staff. A request which is amended in accord herewith shall be deemed to have been received by the Agency on the date of receipt of the amended request.

(i) If the head of the unit concerned determines that the record requested is reasonably described so as to permit its identification, he shall make it available unless he determines, after consultation with the General Counsel, that (1) the record is exempt from disclosure and (2) it should be withheld in the public interest or to protect the rights of persons to whom the information pertains. When such a determination is made the requester shall be immediately notified in writing as provided herein.

(j) ACTION/Peace Corps offices overseas are not responsible for maintenance of any indexes, documents, or records other than materials normally kept and maintained in such offices. Insofar as they do have any materials, they will make them available upon written or oral request of citizens of the United States who are present in their respective countries addressed to the Director, Peace Corps, c/o American Embassy in the applicable country. Such requests shall be treated informally and as expeditiously as possible. In the event any such request is received for information which might be exempt from disclosure under the provisions of § 1215.5 hereof, a copy of the material and the request together with any recommendation shall be forwarded to the Director of Administrative Services for reference to the Associate Director for International Operations and the General Counsel. Such a request shall be considered received upon receipt in the office of the Director of Administrative Services.

(k) ACTION maintains offices in most States, usually in the State capitol. These offices are not responsible for maintaining indexes, reading rooms, or other records or documents other than those normally kept and maintained in such offices. Insofar as they do have any materials, they will make them available upon written or oral request directed to the State Director. Such requests shall be treated informally and as expeditiously as possible. State Directors shall not deny any request for information which reasonably describes the material sought without the approval of the Regional Director and the Office of General Counsel. In the event the State Director determines and is advised that requested information should be withheld, he shall inform the requester to make a formal request to the proper Regional Office or the Director of Administrative Services, for appropriate determination. Requests made to other domestic ACTION offices or facilities shall be handled in the same manner.

§ 1215.7 Authority to release and certify records.

(a) Authority is hereby delegated to the Director of Administrative Services, Office of Administration and Finance, to furnish, pursuant to these regulations, copies of records to any person entitled thereto, and upon request to provide certified copies thereof for use in judicial proceedings or other official matters as provided below.

(b) The Director of Administrative Services and his deputy, are hereby designated to act as authentication officers. When the authentication officer is unavailable, any other person within such office delegated by the Director may act in his place and stead. The authentication officer is hereby authorized to sign and initial certificates of authentication for and in the name of the Director of ACTION. The form of authentication shall be as follows:

> In testimony whereof, I ————————, Director of ACTION, have hereunder caused my name to be subscribed by the authentication officer of said agency at ———————— this ———— day of ————————, 19——.
>
> ————————————————
>
> *Director of ACTION.*
>
> By, ————————————————
>
> *Authentication Officer, ACTION.*

(c) The authentication officer is also hereby authorized to issue such statements, certificates, or other documents as may be required in connection with judicial proceedings or other official matters to show that, after thorough search of ACTION records, a requested record has not been found (See Rule 44(b), Federal Rules of Civil Procedure).

(d) Each Domestic Regional Director of ACTION shall designate a records officer who shall have the same authority as the Director of Administrative Services with respect to documents and records kept and maintained in Regional or State offices. Such records officers shall be responsible to the Director of Administrative Services for such reports as he may require with respect to the production and copying of records.

§ 1215.8 Location of Records.

(a) The Agency will maintain a central records room at its headquarters in Washington, D.C. The headquarters of ACTION is presently located at 806 Connecticut Avenue NW., Washington, D.C. The present location of the central records room shall be the ACTION library, the location of which may change from time to time. The specific location of the library may be determined by requesting such information from the ACTION receptionist in the Office of the Director of ACTION.

(b) The Agency has domestic regional offices in the following places:

Region I
John W. McCormack Federal Building
Room 1420
Boston, Massachusetts 02109

Region II
26 Federal Plaza
New York, New York 10007

Region III
320 Walnut Street
Philadelphia, Pennsylvania 19106

Region IV
730 Peachtree Street, NE.
Atlanta, Georgia 30308

Region V
1 North Wacker Drive
Chicago, Illinois 60606

Region VI
212 No. St. Paul Street
Dallas, Texas 75201

Region VII
Two Gateway Center
4th & State Street
Kansas City, Kansas 66101

Region VIII
Prudential Plaza Building
1050 17th St.
Denver, Colorado 80202

Region IX
100 McAllister Street
San Francisco, California 94102

Region X
1601 Second Avenue
Seattle, Washington 98101

Although it may not always be feasible in these offices to set aside rooms for the exclusive or primary use of the public, every reasonable effort will be made to accommodate members of the public who wish to use regional office facilities for the purpose of inspecting and copying records. The office will also endeavor to maintain and have readily available in its regional offices general materials relating to the Agency available in the central records room. The Regional Records Officer shall receive and handle requests submitted pursuant to this part.

§ 1215.9 Identification of records.

(a) In order for the Agency to locate records and make them available it is necessary that [illegible] be able to identify the specific records sought. Persons wishing to inspect or secure copies of records should therefore seek to describe and identify them as fully and as accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the records officer receiving the request will endeavor to assist the person seeking the records in filling in necessary details.

(b) Among the kinds of information which a person seeking records should try to provide in order to permit an identification of a record are the following:

(1) The unit or program of the Agency which may be responsible for or may have produced the record such as VISTA, Peace Corps, or UYA.

(2) The specific event or action, if any, and if known, to which the record refers.

(3) The date of the record or the period to which it refers or relates if known.

(4) The type of record, such as an application, a contract, a grant or a report.

(5) Personnel of the office who may have prepared or have knowledge of the record.

(6) Citation to newspapers or publications which are known to have referred to the record.

§ 1215.10 Schedule of fees.

(a) It is the policy of ACTION to encourage the widest possible distribution of information concerning programs under its jurisdiction. To the extent practicable, that policy will be applied under this part so as to permit requests for inspection or copies of records to be met without substantial cost to the person making the request. If a request for information does not involve substantial search time or reproduction costs, the information will be furnished without charge as a service to the public.

(b) The following charges will be made for any copies requested by a requester:

(1) Copies made by photostat or otherwise (per page)—$.10.

(2) Search services shall be charged for at the rate of $5 per hour. Such charge may be made whether or not the search is successful in producing the record requested.

(3) In the event a request for documents or records is received which does not state that the requestor will pay any and all reasonably necessary costs, or costs up to an amount specified in such request, and the head of the unit or the Director of Administrative Services determines that the anticipated cost for search and duplication of the records requested will be in excess of $25, or in excess of the limit specified in the request, the Director of Administrative Services shall so advise the requester promptly after receipt of the initial request. Such notification shall specify the anticipated cost of search and reproduction of the records requested. The requester may thereafter amend his request to specify fewer documents, or agree to accept the estimate of anticipated costs, in which case the request shall be deemed received by the Agency upon the date of the requester's response. A requester may, prior to making a request, ask for an estimate of cost from the Director of Administrative Services who shall promptly respond to such request.

(4) Payment shall be made to the Director of Administrative Services by cash or personal check, money order, etc., payable to ACTION. A receipt for any fees will be provided upon request.

(5) A requester may ask in his original request, or subsequently, that documents requested be furnished without charge or at a reduced charge. Upon receipt of such request the Director of Administrative Services shall refer such request to the Deputy Director or such official as he may designate who shall promptly determine whether such request should be complied with. Such request shall be complied with in event that it is determined that a waiver or reduction of fees is in the public interest because the furnishing of the documents or records requested will primarily benefit the general public. When such a request has been included in a request for documents or records or has been made subsequent thereto, the request shall not be deemed to have been received until a determination on the question of waiver or reduction has

been made, provided however, that such determination shall be made within five working days from the date of receipt of any such request. A request for waiver or reduction of fees shall specify the amount of reduction requested and the reasons which cause the requester to feel that the public interest would be served by a waiver or reduction of fees.

PART 1216—NONDISPLACEMENT OF EMPLOYED WORKERS AND NON-IMPAIRMENT OF CONTRACTS FOR SERVICE

Sec.
1216.1-1 Purpose.
1216.1-2 Applicability of this part.
1216.1-3 Policy.
1216.1-4 Exceptions.

AUTHORITY: Secs. 402(12), 404(a), 420 of Pub. L. 93-113, 87 Stat. 394, 408, 414.

SOURCE: 40 FR 16209, Apr. 10, 1975, unless otherwise noted.

§ 1216.1-1 Purpose.

This part establishes rules to assure that the services of volunteers are limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of, or result in the displacement of, employed workers or impair existing contracts for service. It implements section 404(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113 (the "Act").

§ 1216.1-2 Applicability of this part.

(a) All full-time and part-time volunteers assigned, referred or serving pursuant to grants, contracts, or agreements made pursuant to the Act.

(b) All agencies and organizations to which the volunteers in paragraph (a) of this section are assigned, referred or provide services.

§ 1216.1-3 Policy.

(a) Volunteers enrolled or participating in programs referred to in paragraphs (a) and (b) of § 1216.1-2 may not perform any services or duties or engage in activities which would otherwise be performed by an employed worker as part of his assigned duties as an employee.

(b) Volunteer referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which will supplant the hiring of employed workers. This prohibition is violated if, prior to engaging a volunteer, an agency or organization referred to in § 1216.1-2(c) had intended to hire a person to undertake all or a substantial part of the services, duties, or other activities to be provided by the volunteer.

(c) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which result in the displacement of employed workers. Such volunteers may not perform services or duties which have been performed by or were assigned to, any of the following:

(1) Presently employed workers,

(2) Employees who recently resigned or were discharged,

(3) Employees who are on leave (terminal, temporary, vacation, emergency, or sick), or

(4) Employees who are on strike or who are being locked out.

(d) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which impair existing contracts for service. This prohibition is violated if a contract for services is modified or cancelled because an agency or organization referred to in § 1216.1-2(b) engages a volunteer to provide or perform all or a substantial part of any services, duties, or other activities set forth in such contract. The term "contract for services" includes but is not limited to contracts, understandings and arrangements, either written or oral, to provide professional, managerial, technical, or administrative services.

(e) Agencies and organizations referred to in § 1216.1-2(b) are prohibited from assigning or permitting volunteers referred to in § 1216.1-2(a) to perform any services or duties or engage in any activities prohibited by paragraphs (a)-(d) of this section.

§ 1216.1-4 Exceptions.

(a) The requirements of § 1216.1-3 are not applicable to the following, or similar, situations:

(1) Funds are unavailable for the employment of sufficient staff to accomplish a program authorized or of a character eligible for assistance under the Act and the activity, service, or duty is otherwise appropriate for the assignment of a volunteer.

(2) Volunteer services are required in order to avoid or relieve suffering threatened by or resulting from major natural disasters or civil disturbances.

(3) Reasonable efforts to obtain employed workers have been unsuccessful due to the unavailability of persons within the community who are able, willing, and qualified to perform the needed activities.

(4) The assignment of volunteers will significantly expand services to a target community over those which could be performed by existing paid staff, and the activity, service or duty is otherwise appropriate for the assignment of a volunteer and no actual displacement of paid staff will occur as a result of the assignment.

(b) For the purposes of paragraphs (a)(1) and (4) of this section, the assignment is not appropriate for the assignment of a volunteer if:

(1) The service, duty, or activity is principally a routine administrative or clerical task. This definition applies only to any service, duty, or activity performed by a volunteer receiving financial support apart from reimbursement for expenses.

(2) The volunteer is not directly in contact with groups or individuals whom the Act is designed to serve or is not performing services, duties, or engaged in activities authorized or of a character eligible for assistance under the Act.

PART 1217—VISTA VOLUNTEER LEADER

Sec.
1217.1 Introduction.
1217.2 Establishment of position.
1217.3 Qualifications.
1217.4 Selection procedure.
1217.5 Allowances and benefits.
1217.6 Roles of volunteers.

AUTHORITY: Secs. 104(b) and 420 of Pub. L. 93-113, 87 Stat. 398 and 414.

SOURCE: 39 FR 44203, Dec. 23, 1974, unless otherwise noted.

§ 1217.1 Introduction.

Section 105(a)(1), Part A, of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 398, authorizes the Director of ACTION to pay VISTA volunteers a stipend not to exceed $50 per month and a stipend not to exceed $75 a month in the case of VISTA volunteers who have served for at least a year and have been designated volunteer leaders. Section 105(a)(1) further provides that the selection of volunteer leaders shall be pursuant to standards, established in regulations which the Director shall prescribe, which shall be based upon the experience and special skills and the demonstrated leadership of such persons among volunteers.

§ 1217.2 Establishment of position.

A request for the proposed establishment of VISTA volunteer leader position for a specific project shall be submitted by a sponsor in writing in advance to the appropriate ACTION Regional Director. Specific tasks, responsibilities, qualifications, and the proposed supervisory structure are to be detailed in the request.

§ 1217.3 Qualifications.

A volunteer recommended for a VISTA volunteer leader position must have:

(a) Completed a one-year term as a VISTA volunteer.

(b) Demonstrated ability to work constructively and communicate with volunteers, supervisor/sponsor, and the target population.

(c) Demonstrated ability to work well with and gain acceptance of other volunteers.

(d) Demonstrated ability to provide self-motivation and self-direction, and maturity to accept supervision and direction from supervisor/sponsor.

(e) Sensitivity to the needs and attitudes of others, and exhibit a sincere commitment to the mission of VISTA.

§ 1217.4 Selection procedure.

(a) *Nomination.* Candidates may be nominated in writing to the Regional Director by the Program Officer or the State Program Director in whose area the volunteer serves. The nomination shall include a copy of the completed ACTION Form V-95a, for the Regional Director's review.

(b) *Selection.* VISTA volunteer leaders will be selected by the Regional Director (or his designee). The criteria for selection shall include:

(1) The recommendation of the volunteer by the State Program Director or Program Officer.

(2) An overall rating by the supervisor/sponsor of above average on the ACTION Form V-95a.

(3) A description of specific tasks, responsibilities, qualifications, and the proposed supervisory structure, which justifies the establishment of the VISTA volunteer leader position. A selection decision is final.

(c) *Reenrollment.* VISTA volunteer leaders may be reenrolled in accordance with the VISTA reenrollment and extension policy.

§ 1217.5 Allowances and benefits.

The VISTA volunteer leader shall be entitled to all allowances and benefits of a VISTA volunteer at the level which is consistent with the level for all volunteers on his/her project, except that:

(a) The stipend will be increased from $50 to $75 per month effective on the date of selection of the VISTA volunteer leader.

(b) Support for on-the-job transportation may be increased, consistent with ACTION policy.

§ 1217.6 Roles of volunteers.

VISTA volunteer leaders may have the following roles:

(a) Primary contact with VISTA volunteers on personal and administrative matters.

(b) Aid in communication of VISTA policies to VISTA volunteers.

(c) Encourage and develop VISTA volunteer leadership and initiative on projects.

(d) Aid as a resource in development and conduct of training programs.

(e) Assist sponsor in preparation for arrival of VISTA volunteers, and assist new volunteers in settling-in, housing, orientation, etc.

(f) Aid in the development of meaningful relationship and understanding of individual program concepts with VISTA volunteers and supervisor/sponsor.

(g) Advise supervisor on potential problem areas, and needs of VISTA volunteers.

(h) Aid supervisor/sponsor in the redevelopment of projects to best meet goals and objectives addressing the community's problem(s).

PART 1218—VISTA VOLUNTEERS—HEARING OPPORTUNITY

Sec.
1218.1 Introduction.
1218.2 Applicability.
1218.3 Policy.
1218.4 Standards for regional plans.
1218.5 Procedures for approval of plan.
1218.6 Freedom to present views.

AUTHORITY: Sec. 104(d), 402(14) and 420 of Pub. L. 93-113, 87 Stat. 398, 407 and 414.

SOURCE: 39 FR 43725, Dec. 18, 1974, unless otherwise noted.

§ 1218.1 Introduction.

Section 104(d) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 398 requires that the Director of ACTION establish a procedure, including notice and an opportunity to be heard, for VISTA volunteers to present views in connection with the terms and conditions of their service.

§ 1218.2 Applicability.

This part applies to all volunteers enrolled under Part A of Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 396.

§ 1218.3 Policy.

It is ACTION's policy to encourage the free exchange of views between volunteers and staff members with respect to the terms and conditions of the volunteers' service. Ordinarily these exchanges occur in the day-to-day contact between volunteers and staff. However, there are occasions when it is desirable to provide volunteers with an opportunity to present their views with respect to the terms and conditions of their service in a more formal way. The differences between ACTION regions require that the means selected in each region to accomplish this result be appropriate to its particular needs. This regulation provides standards within which regions must establish a procedure to enable volunteers to present their views to be heard with respect to the terms and conditions of their service on a regular basis by appropriate ACTION officials and receive a timely response to their concerns.

§ 1218.4 Standards for regional plan.

Each ACTION Domestic Regional Director shall recommend, after consultation with representative volunteers, sponsors, and other interested persons, the specific procedures to be established for VISTA volunteers to present their views concerning the terms and conditions of their service. Each proposed plan must incorporate the following features:

(a) A free and open opportunity for volunteers to communicate their views to appropriate ACTION regional office officials.

(b) An opportunity for all volunteers to be heard with respect to their views in connection with the terms and conditions of their service by a responsible ACTION regional office official, either personally, or through democratically selected representatives, on a regular basis. The plan must provide such an opportunity to the volunteer at least twice in each year, and provide for notice to volunteers of the time and place of the meeting at which they may be heard.

(c) Appropriate provisions with respect to volunteers' or volunteers' representatives travel expense and per diem which enable the volunteers or their representatives to attend and present their views to the regional office officials at scheduled meetings.

(d) Response to volunteer's views by appropriate ACTION officials in a prescribed period of time.

(e) Summary reports by each Regional Director to the Deputy Associate Director for VISTA and ACTION Education Programs of problems and concerns expressed by volunteers concerning terms and conditions of their service and action taken in response to such problems and concerns.

(f) An opportunity for any volunteer who feels that his/her concerns have not been properly addressed to communicate the same to the Regional Director. Such communication shall be included in the Regional Director's report to the Deputy Associate Director and shall be reviewed by him.

§ 1218.5 Procedures for approval of plan.

Each Regional Director shall submit the plan for his region to the Deputy Associate Director, VISTA and ACTION Education Programs for approval.

Approval by the Deputy Associate Director for VISTA and ACTION Education Programs of the proposed regional plan shall be based upon: (a) The adequacy of the procedures to provide for systematic and open communication of volunteers' views regarding terms and conditions of their service; and (b) the adequacy of the procedures to provide for effective and efficient resolution of volunteers' problems or concerns regarding terms and conditions of their service.

§ 1218.6 Freedom to present views.

The expression by a volunteer of his views with respect to the terms and conditions of his service shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that its programs be conducted in an atmosphere in which volunteers can speak freely, and frankly discuss problems. Nor shall a volunteer who represents such views be subjected to restraint, interference, coercion, discrimination or reprisal because of presentation of his views.

PART 1219—COMPETITIVE SERVICE ELIGIBILITY

Sec.
1219.1 Introduction.
1219.2 Policy.
1219.3 Procedure.

AUTHORITY: Sec. 415(d) and 420 of Pub. L. 93-113, 87 Stat. 412 and 414.

SOURCE: 39 FR 42915, Dec. 9, 1974, unless otherwise noted.

§ 1219.1 Introduction.

Section 415(d), Title IV, of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 412, provides that VISTA Volunteers who have successfully completed their period of service shall be eligible for appointment in the Federal competitive service in the same manner as Peace Corps Volunteers as prescribed in Executive Order No. 11103 (April 10, 1963). This section further provides that the Director of ACTION shall determine who has successfully completed his period of service in accordance with regulations he shall prescribe.

§ 1219.2 Policy.

Certificates of satisfactory service for the purpose of this order shall be issued only to persons who have completed at least one full year of service as a full-time Volunteer under Part A of Title I of the Domestic Volunteer Service Act of 1973 (or Title VIII of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2991-2994d), and who have not been terminated for cause.

§ 1219.3 Procedure.

(a) The Deputy Associate Director for VISTA and Anti-Poverty Programs will ensure that each eligible VISTA Volunteer is promptly notified of his eligibility for competitive service, prior to the completion of his service.

(b) The Deputy Associate Director for VISTA and Anti-Poverty Programs (or his designee) shall, upon the request of a duly recognized representative of any agency in the Executive Branch, certify the VISTA Volunteer's service on ACTION Form A-507.

PART 1220—PAYMENT OF VOLUNTEER LEGAL EXPENSES

Subpart A—General

Sec.
1220.1-1 Introduction.

Subpart B—Criminal Proceedings

1220.2-1 Full-time volunteers.
1220.2-2 Part-time volunteers.
1220.2-3 Procedure.

Subpart C—Civil and Administrative Proceedings

1220.3-1 Full-time volunteers.
1220.3-2 Part-time volunteers.
1220.3-3 Procedure.

AUTHORITY: Secs. 419 and 420 of Pub. L. 93-113, 87 Stat. 413 and 414.

SOURCE: 40 FR 28880, July 9, 1975, unless otherwise noted.

Subpart A—General

§ 1220.1-1 Introduction.

Section 419 of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93-113, 87 Stat. 413, authorizes the Director of ACTION to pay expenses incurred in judicial and administrative proceedings for the defense of full-time or part-time volunteers serving under the Act. These include counsel fees, court costs, bail or other expenses incidental to the volunteer's defense. For part-time volunteers, section 419 provides that the proceeding must arise directly out of the performance of activities pursuant to the Act.

Subpart B—Criminal Proceedings

§ 1220.2-1 Full-time volunteers.

(a)(1) ACTION will pay all reasonable expenses for defense of full-time volunteers up to and including arraignment in Federal, state, and local criminal proceedings, except in cases where it is clear that the charged offense results from conduct which is not related to his service as a volunteer.

(2) Situations where conduct is clearly unrelated to a volunteer's service are those that arise either (i) in a period prior to volunteer service, (ii)

under circumstances where the volunteer is not at his assigned volunteer project location, such as during periods of administrative, vacation, or emergency leave, or (iii) when he is at his volunteer station, but the activity or action giving rise to the charged offense is clearly not part of, or required by, such assignment.

(b) Reasonable expenses in criminal proceedings beyond arraignment may be paid in cases where:

(1) The charge against the volunteer relates to his assignment or status as a volunteer, and not his personal status or personal matters. A charge relating to a volunteer's assignment arises out of any activity or action which is a part of, or required by, such assignment. A charge relating to a volunteer's status is motivated exclusively by the fact that a defendant is a volunteer.

(2) The volunteer has not admitted a willful or knowing violation of law, and

(3) The charge(s) is not a minor misdemeanor, such as a minor vehicle violation for which a fine or bail forfeiture will not exceed $100.

(c) Notwithstanding the foregoing, there may be situations in which the criminal proceeding results from a situation which could give rise to a civil claim under the Federal Tort Claims Act. In such situations, the Justice Department may agree to defend the volunteer. In those cases, unless there is a conflict between the volunteer's interest and that of the government, ACTION will not pay for additional private representation for the volunteer.

§ 1220.2-2 Part-time volunteers.

(a) With respect to a part-time volunteer, ACTION will reimburse a sponsor for the reasonable expenses it incurs for the defense of the volunteer in Federal, state and local criminal proceedings, including arraignment, only under the following circumstances:

(1) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(2) The volunteer receives, or is eligible to receive, compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses, under an ACTION grant project; and

(3) The conditions specified in paragraphs (b) (2) and (3) in § 1220.2-1 above are met.

(b) In certain circumstances volunteers who are ineligible for reimbursement of legal expenses by ACTION may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

§ 1220.2-3 Procedure.

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment of bail to prevent incarceration or other serious consequences to the volunteer or the retention of an attorney prior to arraignment is necessary and is covered under § 1220.2-1 or § 1220.2-2, sponsors shall immediately notify the appropriate ACTION state office or if the state office cannot be reached, the appropriate regional office. The regional office shall provide each sponsor with a 24-hour telephone number.

(b) Immediately after notification of the appropriate office, and with the approval thereof, the sponsor shall advance up to $500 for the payment of bail or such other legal expenses as are necessary prior to arraignment to prevent the volunteer from being incarcerated. In the event it is subsequently determined that ACTION or a sponsor is not responsible under this policy for the volunteer's defense, any such advance may be recovered directly from the volunteer or from allowances, stipends, or out-of-pocket expenses which are payable or become payable to the volunteer. In the case of a grassroots sponsor of full-time volunteers which is not able to provide the $500 the ACTION state or regional office shall immediately make such sum available to the sponsor.

(c) Immediately upon receipt of notification from the sponsor, the state or regional office shall notify the General Counsel, giving all facts and circumstances at that time known to such office. Thereafter the office shall cooperate with the General Counsel in making an investigation of all surrounding facts and circumstances and shall provide such information immediately to the General Counsel.

(d) The General Counsel shall, upon notification by the state or regional office, determine the extent to which ACTION will provide funds for the volunteer's defense or reimburse a sponsor for funds it spends on the volunteer's behalf. Included in this responsibility shall be the negotiation of fees and approval of other costs and expenses. State and regional offices are not authorized to commit ACTION to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided above, without the express consent of the General Counsel. Additionally, the General Counsel shall, in cases arising directly out of the performance of authorized project activities, ascertain whether the services of the United States Attorney can be made available to the volunteer.

(e) The sponsor and the state and regional office shall have a continuing responsibility for cooperation and coordination with the Office of General Counsel during the pendency of any such litigation, and of notifying the General Counsel of any facts and circumstances which come to the attention of such office or the sponsor which affects such litigation.

Subpart C—Civil and Administrative Proceedings

§ 1220.3-1 Full-time volunteers.

ACTION will pay reasonable expenses incurred in the defense of full-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The complaint or charge against the volunteer is directly related to his volunteer service and not to his personal activities or obligations.

(b) The volunteer has not admitted willfully or knowingly pursuing a course of conduct which would result in the plaintiff or complainant initiating such a proceeding, and

(c) If the judgment sought involves a monetary award, the amount sought exceeds $100.

§ 1220.3-2 Part-time volunteers.

ACTION will reimburse sponsors for the reasonable expenses incidental to the defense of part-time volunteers in Federal, state and local civil judicial and administrative proceedings where:

(a) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(b) The volunteer receives or is eligible to receive compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses under an ACTION grant; and

(c) The conditions specified in paragraphs (b) and (c) in § 1220.3-1 above are met.

§ 1220.3-3 Procedure.

Immediately upon the receipt by a volunteer of any court papers or administrative orders making him a part to any proceeding covered under § 1220.3-1 or § 1220.3-2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate ACTION state office. The procedures referred to in § 1220.2-3, paragraphs (c) through (e), shall thereafter be followed as appropriate.

PART 1222—PARTICIPATION OF PROJECT BENEFICIARIES

Sec.

1222.1 Purpose.
1222.2 Applicability.
1222.3 Policy.
1222.4 Advisory group responsibilities.
1222.5 Advisory group expenses.
1222.6 Sponsor's responsibilities.

AUTHORITY: Secs. 106 and 420 of Pub. L. 93-113, 87 Stat. 398 and 414.

SOURCE: 40 FR 57217, Dec. 8, 1975, unless otherwise noted.

§ 1222.1 Purpose.

The purpose of these regulations is to prescribe requirements for the establishment of a continuing mechanism for the meaningful participation of project beneficiaries in the planning, development, and implementation of project activities utilizing full-time volunteers authorized under Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113. This policy specifically implements Section 106, Title I, Pub. L. 93-113.

§ 1222.2 Applicability.

These regulations apply to all full-time volunteer programs and projects under Title I, Pub. L. 93-113, including grant programs. Included in these programs are VISTA (Part A), University Year for ACTION (UYA) (Part B), ACTION Cooperative Volunteers (ACV) and Program for Local Services (PLS) (Part C).

§ 1222.3 Policy.

(a) Each potential project sponsor shall establish an advisory group for the project, to include substantial membership of potential project beneficiaries or, to the extent feasible, their democratically chosen representatives, prior to the submission of an application to ACTION for volunteers.

(b) The term "substantial" means, in this case, a sufficient number of appropriate persons to assure that the concerns and points of view of the potential project beneficiaries are adequately presented and considered in the deliberations of the group. The phrase "project beneficiaries" means, in this case, recipients of benefits accruing directly from project activities as conducted by ACTION Volunteers.

(c) Potential sponsoring organizations that have an established governing, policy, or advisory group whose membership is composed of at least 50% of members of the beneficiary population are not required to establish a separate project advisory group for the purposes of these regulations.

§ 1222.4 Advisory group responsibilities.

The advisory group shall have the following responsibilities for the intent and purposes of these requirements:

(a) To the extent practical, assist the sponsor in the initial planning of a new project proposal and in the planning of a continuation project application.

(b) To review and provide written comments concerning any project application prior to the submission of the application to ACTION. A copy of such comments shall accompany each application to ACTION.

(c) To meet with the sponsoring organization's staff at periodic intervals, but no less than twice per project year, for the purpose of reviewing and commenting on the development and implementation of the project. Such project review and commentary should be directed toward the adequacy of the project to meet the identified needs of the project beneficiaries.

(d) To submit, if it so chooses, written reports and/or copies of minutes of its meetings to the sponsor to accompany the Sponsor's Quarterly Program Report (A-568) submitted to the appropriate ACTION regional office.

§ 1222.5 Advisory group expenses.

As permitted by law, ACTION regional staff may pay for certain incidental out-of-pocket expenses incurred by the advisory group in connection with its responsibilities under § 1222.4.

§ 1222.6 Sponsor's responsibilities.

The sponsor or potential sponsor shall furnish the following evidence of the advisory group's participation in the planning, development, and implementation of the project:

(a) Each new application to ACTION for volunteers shall contain a statement describing how the advisory group has participated in the planning of the project proposal. This statement shall be signed by an authorized representative of the Advisory group (see § 1222.4-2). For continuation project applications, a written statement shall be included which specifies how the advisory group complied with its responsibilities under § 1222.4 of these regulations. This statement shall be signed by an authorized representative of the advisory group (see § 1222.4-2 and 3).

(b) In each Sponsor's Quarterly Program Report (A-568), the sponsor shall include a brief statement describing the extent to which the advisory group was involved in the continuing development and implementation of the project.

PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.
1224.1-1 Purpose.
1224.1-2 Policy.
1224.1-3 Definitions.
1224.1-4 Disclosure of records.
1224.1-5 Annual notices.
1224.1-5a New uses of information.
1224.1-6 Reports regarding changes in systems.
1224.1-7 Use of social security account number in records systems. [Reserved]
1224.1-8 Rules of conduct.
1224.1-9 Records systems—Management and control.
1224.1-10 Security of records systems—Manual and automated systems.
1224.1-11 Accounting for disclosure of records.
1224.1-12 Contents of records systems.
1224.1-13 Access to records.
1224.1-14 Specific exemptions.
1224.1-15 Identification of requestors.
1224.1-16 Amendment of records and appeals with respect thereto.
1224.1-17 Denial of access and appeals with respect thereto.
1224.1-18 Fees.

AUTHORITY: Pub. L. 93-579, 5 U.S.C. 552a.

SOURCE: 42 FR 54286, Oct. 5, 1977, unless otherwise noted.

§ 1224.1-1 Purpose.

The purpose of this part is to set forth the basic policies of ACTION governing the maintenance of systems of records containing personal information as defined in the Privacy Act (5 USC 552a). Records included in this part are those described in aforesaid Act and maintained by ACTION and/or any component thereof.

§ 1224.1-2 Policy.

It is the policy of ACTION to protect, preserve and defend the right of privacy of any individual as to whom the agency maintains personal information in any system records and to provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. It is further the policy of the agency to maintain its records in such a fashion that the information contained therein is and remains material and relevant to the purposes for which it is received in order to maintain its records with fairness to the individuals who are the subject of such records.

§ 1224.1-3 Definitions.

(a) "Record" means any document or other information about an individual maintained by the agency whether collected or grouped and including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or other personal identification number, symbol, etc. assigned to such individual.

(b) "System of Records" means a group of any records under the control of the agency from which information is retrieved by use of the name of an individual or by some identifying number, symbol, or other identifying particular of whatsoever kind or nature.

(c) "Routine Use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term "agency" means ACTION and/or any component thereof.

(e) The term "individual" means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term "maintain" includes the maintenance, collection, use or dissemination of any record.

§ 1224.1-4 Disclosure of records.

The agency will not disclose any personal information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to another agency, without the express written consent of the individual to whom the record pertains, or his agent or attorney, except in the following instances:

(a) To officers or employees of ACTION having a need for such record in the official performance of their duties.

(b) With respect to records which should follow an employee in transfer situations, to the personnel office of a different agency as a result of a transfer or a potential transfer of the individual to whom the record pertains.

(c) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552).

(d) For routine uses as appropriately published in the annual notice of the FEDERAL REGISTER.

(e) To the Bureau of the Census for uses pursuant to Title 13.

(f) To an individual or agency having a proper need for such record for statistical research provided that such record is transmitted in a form which is not individually identifiable and that an appropriate written statement is obtained from the person to whom the record is transmitted stating the purpose for the request and a certification under oath that the records will be used only for statistical purposes.

(g) To the National Archives of the United States as a record of historical value under rules and regulations of the Archives as may be established by the Administrator of General Services or his designee.

(h) To an agency or instrumentality of any governmental jurisdiction within the control of the United States for civil or criminal law enforcement purposes provided however that the head of any such agency instrumentality has made a written request for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the agency to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected provided that such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(i) In emergency situations upon a showing of compelling circumstances affecting the health or safety of any individual provided that after such disclosure notification of such disclosure must be promptly sent to the last known address of the individual to whom the record pertains.

(j) To either House of Congress or to a subcommittee or committee (joint or of either house) to the extent the subject matter falls within their jurisdiction.

(k) To the comptroller general or any of his authorized representatives in the course of the performance of his duties of that of the General Accounting Office.

(l) Pursuant to an order of a court of competent jurisdiction provided that if any such record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the agency must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

§ 1224.1-5 Annual notices.

The agency shall publish annually a notice of all systems of records maintained by it as defined herein in the format prescribed by the General Services Administration in the FEDERAL REGISTER, *Provided, however,* That such publication shall not be made for those systems of records maintained by other agencies though in the temporary custody of this agency.

§ 1224.1-5a New uses of information.

At least 30 days prior to publication of information under the preceding section, the agency shall publish in the FEDERAL REGISTER a notice of its intention to establish any new routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the routine use is to be established.

(b) The authority for the system.

(c) The purpose for which the record is to be maintained.

(d) The proposed routine use(s).

(e) The purpose of the routine use(s).

(f) The categories of recipients of such use. In the event of any request for an addition to the routine uses of the systems which the agency maintains, such request may be sent to the following officer: Director, A&F/AS, ACTION, 806 Connecticut Avenue NW., Washington, D.C. 20525.

§ 1224.1-6 Reports regarding changes in systems.

The agency shall provide to Congress, the Office of Management and Budget, and the Privacy Protection Commission advance notice of any proposal to establish or alter any system of records as defined herein. This report will be submitted in accord with guidelines to be provided by the Office of Management and Budget.

§ 1224.1-7 Use of social security account number in records systems. [Reserved]

§ 1224.1-8 Rules of conduct.

(a) The Head of the agency shall assure that all persons involved in the design, development operation or maintenance of any systems of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the criminal penalties provided under 5 U.S.C. 552a and the fact that agency may be subject to civil suit for failure to comply with the provisions of the Privacy Act and these regulations.

(b) The Head of the agency shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

§ 1224.1-9 Records systems—Management and control.

(a) The Director of Administrative Services (A&F) shall have overall control and supervision of the security of all records keeping systems and shall be responsible for monitoring the security standards set forth in these regulations.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the agency and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers whenever not in use or in the direct control of authorized personnel.

§ 1224.1-10 Security of records systems—Manual and automated systems.

The Head of the agency has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained including all reports and outputs from such systems which contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data and must furthermore minimize to the extent practicable the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in records systems as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or without the agency.

(2) All records systems when not under the personal control of the employees authorized to use same must be stored in an appropriate metal filing cabinet. Where appropriate, such cabinet shall have three position dial-type combination lock, and/or be equipped with a steel lock bar secured by a GSA approved changeable combination padlock or in some such other securely locked cabinet as may be approved by GSA for the storage of such records. Certain systems are not of such confidential nature that their disclosure would harm an individual who is the subject of such record. Records in this category shall be maintained in steel cabinets without the necessity of combination locks.

(3) Access to and use of systems of records shall be permitted only to persons whose official duties require such

access within the agency, for routine uses as defined in subpart B herein as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the agency to persons needing such records in the performance of their official duties or routine users as defined in subpart B herein or such other uses as provided herein, access to records within systems of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to a designated personal representative.

(5) Access to areas where records systems are stored will be limited to those persons whose official duties require work in such areas and proper accountings of removal of any records in storage areas in the form directed by the Director, A&F/AS, shall be maintained at all times.

(6) The agency shall assure that all persons whose official duties who require access to and use of records contained in records systems are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within records systems shall be in accord with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automatic data systems only where facilities or conditions are adequate to prevent unauthorized access to such system in any form. Whenever such data whether contained in punch cards, magnetic tapes or discs are not under the personal control of an authorized person such information must be stored in a metal filing cabinet having a built-in three postion combination lock, a metal filing cabinet equipped with a steel lock bar secured with a GSA approved combination padlock, or in adequate containers or in a secured room or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose official duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose official duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be carried on by shredding, burning or in the case of tapes or discs, degaussing, in accord with any regulations now or hereafter proposed by the GSA or other appropriate authority.

§ 1224.1-11 Accounting for disclosure of records.

Each office maintaining a system of records shall account for all records within such system by keeping a written log in the form prescribed by the Director, A&F/AS, containing the following information:

(a) The date, nature, and purpose of each disclosure of a record to any person or to another agency. Disclosures made to employees of the agency in the normal course of their official duties, or pursuant to the provisions of the Freedom of Information Act need not be accounted for.

(b) Such accounting shall contain the name and address of the person or agency to whom the disclosure was made.

(c) The accounting shall be maintained in accord with a system approved by the Director, A&F/AS, as sufficient for the purpose but in any event sufficient to permit the construction of a listing for all disclosures at appropriate periodic intervals.

(d) The accounting shall reference any justification or basis upon which any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the provisions of subsection (b) of the Privacy Act of 1974 (5 U.S.C. 552a).

(e) For the purpose of this part, the system of accounting for disclosures is not a system of records under the definitions hereof and no accounting need be maintained for the disclosure of accounting of disclosures.

§ 1224.1-12 Contents of records systems.

The agency shall maintain in any records contained in any records system hereunder only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which the agency acquired the information as authorized by statute or Executive Order.

(a) In situations in which the information may result in adverse determinations about such individuals' rights, benefits and privileges under any Federal program, all information placed in records systems shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(b) Each form or other document which an individual is expected to complete in order to provide information for any records system shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 1224.1-6 of this regulation.

(4) The effect on the individual if any of not providing all or part of the required or requested information.

(c) Records maintained in any system of record used by the agency to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual, provided however, that the agency shall not be required to update or keep current retired records.

(d) Before disseminating any record about any individual to any person other than an agency, unless the dissemination is made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) the agency shall make reasonable efforts to assure that such records are, or were at the time they were collected, accurate, complete, timely and relevant for agency purposes.

(e) Under no circumstances shall the agency maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the first amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

(f) In the event any record is disclosed as a result of the order of a court of appropriate jurisdiction, the agency shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

§ 1224.1-13 Access to records.

(a) Upon request of any individual about whom a record is maintained addressed to the Director of Administrative Services, 806 Connecticut Avenue NW., Washington, D.C. 20525, in person during regular business hours, or by mail, access to his record or to any information contained therein shall be provided.

(b) If the request is made in person, such individual may, upon his request, be accompanied by a person of his choosing to review the record and shall be provided an opportunity to have a copy made of all or any record about such individual.

(c) A record may be disclosed to a representative chosen by the individual as to whom a record is maintained upon proper written consent of such individual.

(d) Request made in person will be promptly complied with if the records sought are in the immediate custody of ACTION. Mailed requests or personal requests for documents in storage or otherwise not immediately available, will be acknowledged within ten working days, and the information requested will be promptly provided thereafter.

(e) With regard to any request for disclosure of record the following procedure shall apply:

(1) Medical or psychological records shall be disclosed to an individual unless in the judgment of the agency, access to such records might have an adverse effect upon such individual. When such determinaion has been made, the agency may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his professional judgment.

(2) Test material and copies of certificates or other lists of eligibles or any other listing, the disclosure of which would violate the privacy of any other individual, or be otherwise proscribed by the provision of the Privacy Act of 1974, shall be removed from the record before disclosure to any individual to whom the record pertains.

§ 1224.1-14 Specific exemptions.

Records or portions of records specified below shall be exempt from disclosure provided however that no such exemption shall apply to the provisions of § 1224.1-16(d)(3) hereof (informing prior recipient of corrected or disputed records), § 1224.1-12(a) (collecting information directly from the individual to whom it pertains); § 1224.1-12(b) (informing individuals asked to supply information of the purposes for which it is collected and whether it is mandatory); § 1224.1-12(c) (maintaining records with accuracy, completeness, etc. as reasonably necessary for agency purposes); § 1224.1-12(f) (notifying the subjects of records disclosed under compulsory court process); § 1224.1-16(g) (civil remedies). With the above exceptions the following material shall be exempt from disclosure to the extent indicated:

(a) Material considered classified and exempt from disclosure under the provisions of section 552(b)(1) of the Freedom of Information Act (5 U.S.C. 552).

(b) Investigatory material compiled for the purposes of law enforcement provided, however, that if such information is to be used for the basis for denial of any right, privilege or benefit to which such individual would be entitled by Federal law or otherwise, such material shall be provided to the such individual except to the extent necessary to protect the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence, or prior to the effective date of the Privacy Act of 1974, under an implied promise of such source.

(c) Required by statute to be maintained and used solely as statistical records.

(d) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualification for service as an employee or volunteer or for the obtaining of a Federal contract or for access to classified information; provided, however, that such material shall be disclosed to the extent possible without revealing the identity of a source who furnished information to the government under an express promise of the confidentiality of his identity or, prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of identity.

(e) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(f) An individual shall not have a right of access to any information compiled by the agency in reasonable anticipation of a civil action or proceeding.

The above specific exemptions from disclosure are made for the purpose of protecting the confidentiality of classified information, sources who furnish information for law enforcement purposes or selection purposes for volunteer service or employment, and to protect the integrity of any system of tests or examinations for Federal service or advancement therein.

§ 1224.1-15 Identification of requestors.

The agency shall require reasonable identification of all individuals who request access to records to assure that records are disclosed to the proper person.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a drivers license etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act of 1974.

(b) In the event that disclosure is requested by mail, the agency may request such information as may be necessary to reasonably assure that the individual making such request is properly identified. In certain cases, the agency may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation or identification, the agency may require a signed notarized statement asserting the identity of the individual and stipulating that the individual inderstands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

(d) In the event a requestor wishes to be accompanied by another person while reviewing his or her records, the agency may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

§ 1224.1-16 Amendment of records and appeals with respect thereto.

A request for inspection of any record shall be made to the Director, A&F/Administrative Services, 806 Connecticut Avenue NW., Washington, D.C. 20525. Such request may be made by mail or in person provided however that requests made in person may be required to be made upon a form to be provided by the Director of Administrative Services. The Director of Administrative Services shall keep a current list of systems of records maintained by the agency and published in accordance with the provisions of these regulations. Requests as to record systems maintained in Regional Offices may be addressed to the appropriate Regional Office, Attention the Regional Records Officer, in person or by mail. A requesting individual may request that the agency compile all records pertaining to such individual at any named Regional Office or at the Central Office in Washington, D.C., for such individual's inspection and/or copying. In the event an individual makes such request for a compilation of all records pertaining to him in various locations, appropriate time for such compilation shall be provided as may be necessary to promptly comply with such requests.

Any such requests should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required in the event the individual wishes to see less than all records maintained about him.

(a) In the event an individual after examination of his record desires to request an amendment of such records, he may do so by addressing such request to the Director of Administrative Services. The Director of Administrative Services shall provide assistance in preparing any such amendment upon request and a written acknowledgement of receipt of such request within 10 working days from the receipt thereof from the individual who requested the amendment. Such acknowledgment may, if necessary, request any additional information needed to make a determination with respect to such request. If the agency makes a determination to comply with such request within such 10-day period, no written acknowledgement is necessary, provided however that a certification of such change shall be provided to such individual within such period.

(b) Promptly after acknowledgment of the receipt of a request for an amendment the agency shall take one of the following actions:

(1) Make any corrections of any portion of the record which the individual believes is not accurate, relevant, timely or complete.

(2) Inform the individual of its refusal to amend the record in accord with the request together with the reason for such refusal and the procedures established for requesting review of such refusal by the head of the agency or his designee. Such notice shall include the name and business address of such official.

(3) Refer the request to the agency that has control of and maintains the record in those instances where the record requested remains the property of the controlling agency and not of ACTION.

(c) In reviewing a request to amend the record the agency shall assess the accuracy, relevance, timeliness and completeness of the record with due and appropriate regard for fairness to the individual about whom the record is maintained. In making such determination, the agency shall consult criteria for determining record quality published in pertinent chapters of the Federal Personnel Manual and to the extent possible shall accord therewith.

(d) In the event the agency agrees with the individual's request to amend such record, it shall:

(1) Advise the individual in writing,

(2) Correct the record accordingly, and

(3) Advise all previous recipients of a record which was corrected of the correction and its substance.

(e) In the event the agency, after an initial review of the request to amend a record, disagrees with all or a portion of it, the agency shall:

(1) Advise the individual of its refusal and the reasons therefore,

(2) Inform the individual that he or she may request further review in accord with the provisions of these regulations, and

(3) The name and address to whom the request should be directed.

(f) In the event an individual requestor disagrees with the initial agency determination, he or she may appeal such determination to the Deputy Director of the Agency or his designee. Such request for review must be made within 30 days after receipt by the requestor of the initial refusal to amend.

(g) If after review the Deputy Director or his designee refuses to amend the record as requested he shall advise the individual requester of such refusal and the reasons for same; of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency in the record; of the procedures for filing a statement of disagreement and of the fact that such statement so filed will be made available to anyone to whom the record is subsequently disclosed together with a brief statement of the agency summarizing its reasons for refusal, if the agency decides to place such brief statement in the record. The agency shall have the authority to limit the length of any statement to be filed, such limit to depend upon the record involved. The agency shall also inform such individual that prior recipients of the disputed record will be provided a copy of both statements of dispute to the extent that the accounting of disclosures has been maintained and of the individual's right to seek judicial review of the agency's refusal to amend the record.

(h) If after review the official determines that the record should be amended in accordance with the individual's request the agency shall proceed as provided above in the event a request is granted upon initial demand.

(i) Final agency determination of an individual's request for a review shall be concluded within 30 working days from the initial request excluding the period of time between receipt by such individual of the initial denial and his or her filing of a request for review provided however that the Deputy Director or his designee may determine that fair and equitable review cannot be made within that time. If such circumstances occurs, the individual shall be notified of the additional time required in writing and of the approximate date on which determination of the review is expected to be completed.

§ 1224.1-17 Denial of access and appeals with respect thereto.

In the event that the agency finds it necessary to deny any individual access to a record about such individual pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days from the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Privacy Act.

(a) In the event an individual desires to appeal any denial of access, he may do so in writing by addressing such appeal to the attention of the Deputy Director, ACTION, c/o the Director, AF/Administrative Services, 806 Connecticut Avenue NW., Washington, D.C. 20525. Although there is no time limit for such appeals, ACTION shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) The Deputy Director, or his designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 20 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such requests to have judicial review of the denial as provided in the Privacy Act (5 U.S.C. 552a).

§ 1224.1-18 Fees.

No fees shall be charged for search time or for any other time expended by the agency to produce a record. Copies of records may be charged for at the rate of 10 cents per page provided that one copy of any record shall be provided free of charge.

PART 1225—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Subpart A—General Provisions

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AUTHORITY: Secs. 417, 402(14), 420, Pub. L. 93-113, 87 Stat. 398, 407, and 414; Sec. 5(a), Pub. L. 87-293, 75 Stat. 613; Executive Order 12137, issued May 16, 1979.

SOURCE: 46 FR 1609, Jan. 6, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1225.1 Purpose.

The purpose of this part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, which arise in connection with the recruitment, selection, placement, service, or termination of Peace Corps and ACTION applicants, trainees, and Volunteers for full-time service.

§ 1225.2 Policy.

It is the policy of Peace Corps and ACTION to provide equal opportunity in all its programs for all persons and to prohibit discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, in the recruitment, selection, placement, service, and termination of Peace Corps and ACTION Volunteers. It is the policy of Peace Corps and ACTION upon determining that such prohibited discrimination has occurred, to take all necessary corrective action to remedy the discrimination, and to prevent its recurrence.

§ 1225.3 Definitions.

Unless the context requires otherwise, in this Part:

(a) "Director" means the Director of Peace Corps for all Peace Corps applicant, trainee, or Volunteer complaints processed under this Part, or the Director of ACTION for all domestic applicant, trainee, or Volunteer complaints processed under this Part. The term shall also refer to any designee of the respective Director.

(b) "EO Director" means the Director of the Equal Opportunity Division of the Office of Compliance, ACTION. The term shall also refer to any designee of the EO Director.

(c) "Illegal discrimination" means discrimination on the basis of race, color, national origin, religion, age, sex, handicap or political affiliation as defined in Section 5(a) of the Peace Corps Act (22 U.S.C. 2504); Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000-16); Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791, et seq.); and the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.). Further clarification of the scope of matters covered by this definition may be obtained by referring to the following regulations: Sex Discrimination: 29 CFR Part 1604; Religious Discrimination: 29 CFR Part 1605; National Origin Discrimination: 29 CFR Part 1606; Age Discrimination: 45 CFR Part 90; Handicap Discrimination: 29 CFR 1613.701-707.

(d) "Applicant" means a person who has submitted to the appropriate agency personnel a completed application required for consideration of eligibility for Peace Corps or ACTION volunteer service. "Applicant" may also mean a person who alleges that the actions of agency personnel precluded him or her from submitting such an application or any other information reasonably required by the appropriate personnel as necessary for a determination of the individual's eligibility for volunteer service.

(e) "Trainee" means a person who has accepted an invitation issued by Peace Corps or ACTION and has registered for Peace Corps or ACTION training.

(f) "Volunteer" means a person who has completed successfully all necessary training; met all clearance standards; has taken, if required, the oath prescribed in either Section 5(j) of the Peace Corps Act (22 U.S.C. 2504), or Section 104(c) of the Volunteer Service Act of 1973, as amended (42 U.S.C. 104(c)) and has been enrolled as a full-time Volunteer by the appropriate agency.

(g) "Complaint" means a written statement signed by the complainant and submitted to the EO Director. A complaint shall set forth specifically and in detail:

(1) A description of the Peace Corps or ACTION management policy or practice, if any, giving rise to the complaint;

(2) A detailed description including names and dates, if possible, of the actions of the Peace Corps or ACTION officials which resulted in the alleged illegal discrimination;

(3) The manner in which the Peace Corps or ACTION action directly affected the complainant; and

(4) The relief sought.

A complaint shall be deemed filed on the date it is received by the appropriate agency official. When a complaint does not conform with the above definition, it shall nevertheless be accepted. The complainant shall be notified of the steps necessary to correct the deficiencies of the complaint. The complainant shall have 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint.

(h) "Counselor" means an official designated by the EO Director to perform the functions of conciliation as detailed in this part.

(i) "Agent" means a class member who acts for the class during the processing of a class complaint. In order to be accepted as the agent for a class complaint, in addition to those requirements of a complaint found in § 1225.3(g) of this part, the complaint must meet the requirements for a class complaint as found in Subpart C of these regulations.

§ 1225.4 Coverage.

(a) These procedures apply to all Peace Corps or ACTION applicants, trainees, and Volunteers throughout their term of service with the Peace Corps or ACTION. When an applicant, trainee, or Volunteer makes a complaint which contains an allegation of illegal discrimination in connection with an action that would otherwise be processed under a grievance, early termination, or other administrative system of the agency, the allegation of illegal discrimination shall be processed under this Part. At the discretion of the appropriate Director, any other issues raised may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated shall continue to be processed under those procedures in which they were originally raised.

(b) The submission of class complaints alleging illegal discrimination as defined above will be handled in accordance with the procedure outlined in Subpart C.

§ 1225.5 Representation.

Any aggrieved party may be represented and assisted in all stages of these procedures by an attorney or representative of his or her own choosing. An aggrieved party must immediately inform the agency if counsel is retained. Attorney fees or other appropriate relief may be awarded in the following circumstances:

(a) Informal adjustment of a complaint. An informal adjustment of a complaint may include an award of attorney fees or other relief deemed appropriate by the EO Director. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on their amount, this issue may be appealed to the appropriate Director to be determined in the manner detailed in § 1225.11 of this part.

(b) Final Agency Decision. When discrimination is found, the appropriate Director shall advise the complainant that any request for attorney fees or costs must be documented and submitted for review within 20 calendar days after his or her receipt of the final agency decision. The amount of such awards shall be determined under § 1225.11. In the unusual situation in which it is determined not to award attorney fees or other costs to a prevailing complainant, the appropriate Director in his or her final decision shall set forth the specific reasons thereof.

§ 1225.6 Freedom from reprisal.

Aggrieved parties, their representatives, and witnesses will be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage described in § 1225.8 of this part, or any time thereafter.

§ 1225.7 Review of allegations of reprisal.

An aggrieved party, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this part, may, if covered by this part, request in writing that the allegation be reviewed as an individual complaint of discrimination subject to the procedures described in Subpart B or that the allegation be considered as an issue in the complaint at hand.

Subpart B—Processing Individual Complaints of Discrimination

§ 1225.8 Precomplaint procedure.

(a) An aggrieved person who believes that he or she has been subject to illegal dicrimination shall bring such allegations to the attention of the appropriate Counselor within 30 days of the alleged discrimination to attempt to resolve them. The process for notifying the appropriate Counselor is the following:

(1) Aggrieved applicants, trainees or Volunteers who have not departed for overseas assignments, or who have returned to Washington for any administrative reason shall direct their allegations to the EO Director for assignment to an appropriate Counselor.

(2) Aggrieved trainees or Volunteers overseas shall direct their allegations to the designated Counselor for that post.

(3) Aggrieved applicants, trainees, and Volunteers applying for, or enrolled in ACTION domestic programs shall direct their allegations to the designated Counselor for that Region.

(b) Upon receipt of the allegation, the Counselor or designee shall make whatever inquiry is deemed necessary into the facts alleged by the aggrieved party and shall counsel the aggrieved party for the purpose of attempting an informal resolution agreeable to all parties. The Counselor will keep a written record of his or her activities which will be submitted to the EO Director if a formal complaint concerning the matter is filed.

(c) If after such inquiry and counseling an informal resolution to the allegation is not reached, the Counselor shall notify the aggrieved party in writing of the right to file a complaint of discrimination with the EO Director within 15 calendar days of the aggrieved party's receipt of the notice.

(d) The Counselor shall not reveal the identity of the aggrieved party who has come to him or her for consultation, except when authorized to do so by the aggrieved party. However, the identity of the aggrieved party may be revealed once the agency has accepted a complaint of discrimination from the aggrieved party.

§ 1225.9 Complaint procedure.

(a) *EO Director.* (1) The EO Director must accept a complaint if the process set forth above has followed, and the complaint states a charge of illegal discrimination. The agency will extend the time limits set herein (a) when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or (b) the complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter in a timely fashion, or (c) for other reasons considered sufficiently by the agency. At any time during the complaint procedure, the EO Director may cancel a complaint because of failure of the aggrieved party to prosecute the complaint. If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in § 1225.8 or is cancelled, the EO Director shall inform the aggrieved party in writing of this Final Agency Decision; that the Peace Corps or ACTION will take no further action; and of the right, to file a civil action as described in § 1225.21 of this part.

(2) Upon acceptance of the complaint and receipt of the Counselor's report, the EO Director shall provide for the prompt investigation of the complaint. Whenever possible, the person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute discrimination against the complainant. The investigator shall compile an investigative file, which includes a summary of the investigation, recommended findings of fact and a recommended resolution of the complaint. The investigator shall forward the investigative file to the EO Director and shall provide the complainant with a copy.

(3) The EO Director shall review the complaint file including any additional statements provided by the complainant, make findings of fact, and shall offer an adjustment of the complaint if the facts support the complaint. If the proposed adjustment is agreeable to all parties, the terms of the adjustment shall be reduced to writing, signed by both parties, and made part of the complaint file. A copy of the terms of the adjustment shall be provided the complainant. If the proposed adjustment of the complaint is not ac-

ceptable to the complainant, or the EO Director determines that such an offer is inappropriate, the EO Director shall forward the complaint file with a written notification of the findings of facts, and his or her recommendation of the proposed disposition of the complaint to the appropriate Director. The aggrieved party shall receive a copy of the notification and recommendation and shall be advised of the right to appeal the recommended disposition to the appropriate Director. Within ten (10) calendar days of receipt of such notice, the complainant may submit his or her appeal of the recommended disposition to the appropriate Director.

(b) *Appeal to Director.* If no timely notice of appeal is received from the aggrieved party, the appropriate Director or designee may adopt the proposed disposition as the Final Agency Decision. If the aggrieved party appeals, the appropriate Director or designee, after review of the total complaint file, shall issue a decision to the aggrieved party. The decision of the appropriate Director shall be in writing, state the reasons underlying the decision, shall be the Final Agency Decision, shall inform the aggrieved party of the right to file a civil action as described in § 1225.21 of this part, and, if appropriate, designate the procedure to be followed for the award of attorney fees or costs.

§ 1225.10 Corrective action.

When it has been determined by Final Agency Decision that the aggrieved party has been subjected to illegal discrimination, the following corrective actions may be taken:

(a) Selection as a Trainee for aggrieved parties found to have been denied selection based on prohibited discrimination.

(b) Reappointment to Volunteer service for aggrieved parties found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a Volunteer will be placed in the same position previously held. However, reassignment to the specific country of prior service, or to the specific position previously held, is contingent on several programmatic considerations such as the continued availability of the position, or program in that country, and acceptance by the host country of such placement. If the same position is deemed to be no longer available, the aggrieved party will be offered a reassignment to a position in as similar circumstances to the position previously held, or to resign from service for reasons beyond his or her control. Such a reassignment may require both additional training and an additional two year commitment to volunteer service.

(c) Provision for reasonable attorney fees and other costs incurred by the aggrieved party.

(d) Such other relief as may be deemed appropriate by the Director of Peace Corps or ACTION.

§ 1225.11 Amount of attorney fees.

(a) When a decision of the agency provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the appropriate Director. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the appropriate Director shall issue a decision determining the amount of attorney fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(b) The amount of attorney's fees shall be made in accordance with the following standards: the time and labor required, the novelty and difficulty of the questions, the skills requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.

Subpart C—Processing Class Complaints of Discrimination

§ 1225.12 Precomplaint procedure.

An applicant, trainee or Volunteer who believes that he or she is among a group of present or former Peace Corps or ACTION Volunteers, trainees, or applicants for volunteer service who have been illegally discriminated against and who wants to be an agent for the class shall follow those precomplaint procedures outlined in § 1225.8 of this part.

§ 1225.13 Acceptance, rejection or cancellation of complaint.

(a) Upon receipt of a class complaint, the Counselor's report, and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the EO Director shall review the file to determine whether to accept or reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation which is identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites.

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are representative of the claims of the class;

(iv) The agent of the class, or his or her representative will fairly and adequately protect the interest of the class.

(b) If an allegation is not included in the Counselor's report, the EO Director shall afford the agent 15 calendar days to explain whether the matter was discussed and if not, why he or she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the EO Director may decide to reject the allegation. If the explanation is satisfactory, the EO Director may require further counseling of the agent.

(c) If an allegation lacks specificity and detail, or if it was not submitted in writing or not signed by the agent, the EO Director shall afford the agent 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint. The EO Director may decide that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the EO Director must advise the agent how to proceed on an individual or class basis concerning these allegations.

(d) The EO Director may extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his or her representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limit.

(e) When appropriate, the EO Director may determine that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(f) The EO Director may cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after:

(1) The EO Director has provided the agent a written request, including notice of proposed cancellation, that he or she provide certain information or otherwise proceed with the complaint; and

(2) within 30 days of his or her receipt of the request.

(g) An agent must be informed by the EO Director in a request under paragraphs (b) or (c) of this section that his or her complaint may be rejected if the information is not provided.

§ 1225.14 Consolidation of complaints.

The EO Director may consolidate the complaint if it involves the same or sufficiently similar allegations as those contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency.

§ 1225.15 Notification and opting out.

(a) Upon acceptance of a class complaint, the agency, within 30 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) The name of the agency or organizational segment thereof, its location and the date of acceptance of the complaint; (2) a description of the issues accepted as part of the class complaint; (3) an explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and (4) an explanation of the binding nature of the final decision or resolution of the complaint.

§ 1225.16 Investigation and adjustment of complaint.

The complaint shall be processed promptly after it has been accepted. Once a class complaint has been accepted, the procedure outlined in § 1225.9 of this part shall apply.

§ 1225.17 Agency decision.

(a) If an adjustment of the complaint cannot be made the procedures outlined in § 1225.9 shall be followed by the EO Director except that any notice required to be sent to the aggrieved party shall be sent to the agent of the class or his or her representative.

(b) The Final Agency Decision on a class complaint shall be binding on all members of the class.

§ 1225.18 Notification of class members of decision.

Class members shall be notified by the agency of the final agency decision and corrective action, if any, using at the minimum, the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. Notice shall be given by the agency within ten (10) calendar days of the transmittal of its decision to the agent.

§ 1225.19 Corrective action.

(a) When discrimination is found, Peace Corps or ACTION must take appropriate action to eliminate or modify the policy or practice out of which such discrimination arose, and provide individual corrective action to the agent and other class members in accordance with § 1225.10 of this part.

(b) When discrimination is found and a class member believes that but for that discrimination he or she would have been accepted as a Volunteer or received some other volunteer service benefit, the class member may file a written claim with the EO Director within thirty (30) calendar days of notification by the agency of its decision.

(c) The claim must include a specific, detailed statement showing that the claimant is a class member who was affected by an action or matter resulting from the discriminatory policy or practice which arose not more than 30 days preceding the filing of the class complaint.

(d) The agency shall attempt to resolve the claim within sixty (60) calendar days after the date the claim was postmarked, or, in the absence of a postmark, within sixty (60) calendar days after the date it was received by the EO Director.

§ 1225.20 Claim appeals.

(a) If the EO Director and claimant do not agree that the claimant is a member of the class, or upon the relief to which the claimant is entitled, the EO Director shall refer the claim, with recommendations concerning it to the appropriate Director for Final Agency Decision and shall so notify the claimant. The class member may submit written evidence to the appropriate Director concerning his or her status as a member of the class. Such evidence must be submitted no later than ten (10) calendar days after receipt of referral.

(b) The appropriate Director shall decide the issue within thirty (30) days of the date of referral by the EO Director. The claimant shall be informed in writing of the decision and its basis and that it will be the Final Agency Decision on the issue.

§ 1225.21 Statutory rights.

(a) A Volunteer, trainee, or applicant is authorized to file a civil action in an appropriate U.S. District Court:

(1) Within thirty (30) calendar days of his or her receipt of notice of final action taken by the agency.

(2) After one hundred eighty (180) calendar days from the date of filing a complaint with the agency if there has been no final agency action.

(b) For those complaints alleging discrimination that occur outside the United States, the U.S. District Court for the District of Columbia shall be deemed the appropriate forum.

PART 1226—PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES

Subpart A—General Provisions

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Subpart D—Sponsor Employee Activities

1226.12 Sponsor employees.
1226.13 Obligation of sponsors.

Authority: Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412.

Source: 46 FR 8522, Jan. 27, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 1226.1 Purpose.

This part implements provisions of the Domestic Volunteer Service Act, 1973, 87 Stat. 394, Pub. L. 93-113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or the involvement of agency programs and volunteers in electoral and lobbying activities. These regulations are designed to define and clarify the nature and scope of prohibited activities to ensure that programs under the Act and volunteer activities are conducted within the statutory bounds established by the Act. The penalties for violation of the regulations are also prescribed. The statutory source of the prohibitions upon electoral and lobbying activities is section 403 (a) and (b) of the Act. Rules applying to the Hatch Act (Title III of Chapter 73, Title 5, United States Code) to full time and certain part time volunteers, as required by Section 415(b) of the Act, are also set forth herein.

§ 1226.2 Scope.

This part applies, except where otherwise noted, to all full time and part time volunteers serving in a program authorized by the Act, including VISTA, Service Learning and the Older American Volunteer Programs.

It also applies to employees of sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

§ 1226.3 Definitions.

(a) The "Act" means the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113 (42 U.S.C. 4951 *et seq.*).

(b) "Assistance" means funds, volunteers or volunteer training, which is paid for from funds appropriated for the purpose of supporting activities under the Act, and includes locally provided funds required by law, regulation or policy as a local contribution to activities authorized by the Act.

(c) "Full time" when used in the context of volunteer service, means service of not less than 35 hours per week.

(d) "Part time" when used in the context of volunteer service, means service that is less than full time.

(e) "Recipient" or "sponsor organization" means any organization that receives assistance under the Act.

(f) "Volunteer" means an individual enrolled for service in a program or project that is authorized by or which receives assistance under the Act.

(g) "Legislative body" includes the United States Congress, State and Territorial Legislatures and locally elected or appointed bodies with the authority to enact laws.

(h) "Public office" includes any Federal, State, local elective, or party office.

(i) "Party office" means an elective position in a national, state or local organization or committees or convention of such organization, which has, as a principal purpose, support or opposition to candidates for public office.

(j) "Legislation" means bills, resolutions, amendments, nominations and other matters pending or proposed in a legislative body and includes any other matter which may be the subject of action by the legislative body.

Subpart B—Sponsoring Organization

§ 1226.4 General.

Under section 403 of the Act, volunteer programs may not be conducted in a manner which supports or results in the identification of such programs with prohibited activities. This section prescribes the nature and extent of involvement in such activity by an organization which would preclude the assignment of volunteers to the organization.

§ 1226.5 Electoral, voter registration, and other activities.

Volunteers or other assistance, in any program under the Act shall not be assigned or provided to an organization if a principal purpose or activity of the organization includes any of the following activities:

(a) *Electoral Activities*—Any activity designed to influence the outcome of elections to any public office, such as:

(1) Actively campaigning for or against or supporting candidates for public office;

(2) Raising, soliciting or collecting funds for candidates for public office;

(3) Preparing, distributing or providing funds for campaign literature for candidates, including leaflets pamphlets, and material designed for the print or electronic media;

(b) *Voter Registration Activities*—Any voter registration activity, such as

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) Disseminating official voter registration material.

(c) *Transportation to the Polls*—Providing voters or prospective voters with transportation to the polls or raising, soliciting or collecting funds for such activity.

(d) Any program sponsor which, subsequent to the receipt of any federal assistance under the Act, makes as one of its principal purposes or activities any of the activities described in § 1226.5 hereof shall be subject to the suspension or termination of such assistance, as provided in 45 CFR Part 1206.

Subpart C—Volunteer Activities

§ 1226.6 General.

(a) All volunteers, full and part time, are subject to the prohibitions on expenditure of federal funds for partisan and nonpartisan electoral activities, voter registration activities and transportation of voters to the polls, and efforts to influence the passage or defeat of legislation, as contained in Section 403 of the Act.

(b) Full time volunteers, and certain part time volunteers as specified herein, are also subject to the restrictions in Subchapter III, Chapter 73 of Title 5, United States Code, commonly referred to as the Hatch Act, as provided in Section 415(b) of the Act.

§ 1226.7 Scope.

The provisions in this subpart are applicable to full time volunteers as defined in § 1226.3(c), and to such part time volunteers as may be otherwise specified herein. Full time volunteers are deemed to be acting in their capacity as volunteers:

(a) When they are actually engaged in their volunteer assignments. VISTA volunteers and other full time volunteers who are required to serve without regard to regular working hours are presumed to be actually engaged in their volunteer assignments at all times, except during periods of authorized leave; or

(b) Whenever they represent themselves, or may reasonably be perceived by others, to be performing as a volunteer.

§ 1226.8 Prohibited activities.

(a) Electoral Activity—Volunteers shall not engage in any activity which may, directly or indirectly, affect or influence the outcome of any election to public office. Volunteers are prohibited from engaging in activities such as:

(1) Any activity in support of, or in opposition to a candidate for election to public office in a partisan or nonpartisan election;

(2) Participating in the circulation of petitions, or the gathering of signatures on nominating petitions or similar documents for candidates for public office.

(3) Raising, soliciting, or collecting funds for a candidate for public office;

(4) Preparing, distributing or providing funds for campaign material for candidates, including leaflets, pamphlets, brochures and material designed for the print or electronic media;

(5) Organizing political meetings or forums;

(6) Canvassing voters on behalf of a candidate for public office;

(7) Raising, soliciting or collecting funds for groups that engage in any of the activities described in paragraph (a) (1) through (6) of this section.

(b) Voter Registration—Volunteers shall not engage in any voter registration activity, including:

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) The dissemination of official voter registration materials; or

(4) Raising, soliciting or collecting funds to support activities described in paragraph (b) (1) through (3) of this section.

(c) Transportation to the Polls—Volunteers shall not engage in any activity to provide voters or prospective voters with transportation to the polls, nor shall they collect, raise, or solicit funds to support such activity, including securing vehicles for such activity.

(d) Efforts to Influence Legislation—Except as provided in § 1226.9, volunteers shall not engage in any activity for the purpose of influencing the passage or defeat of legislation or any measures on the ballot at a general or special election. For example, volunteers shall not:

(1) Testify or appear before legislative bodies in regard to proposed or pending legislation;

(2) Make telephone calls, write letters, or otherwise contact legislators or legislative staff, concerning proposed or pending legislation for the purpose of influencing the passage or defeat of such legislation;

(3) Draft legislation;

(4) Prepare legislative testimony;

(5) Prepare letters to be mailed by third parties to members of legislative bodies concerning proposed or pending legislation;

(6) Prepare or distribute any form of material, including pamphlets, newspaper columns, and material designed for either the print or electronic media, which urges recipients to contact their legislator or otherwise seek passage or defeat of legislation;

(7) Raise, collect or solicit funds to support efforts to affect the passage or defeat of legislation;

(8) Engage in any of the activities set forth in paragraph (d) (1) through (7) of this section for the purpose of influencing executive action in approving or vetoing legislation.

(9) Circulate petitions, gather signatures on petitions, or urge or organize others to do so, which seek to have measures placed on the ballot at a general or special election.

(10) Engage in any of the activities enumerated in paragraph (d) (1) through (9) of this section in regard to the passage or defeat of any measure on the ballot in a general or special election.

§ 1226.9 Exceptions.

(a) A volunteer may draft, review, testify or make representations to a legislative body regarding a legislative measure upon request of the legislative body, a committee, or a member thereof, provided that:

(1) The request to draft, review, testify or make representations is in writing, addressed to the volunteer or the organization to which the volunteer is assigned or placed, and signed by a member or members of the legislative body.

(2) The request states the type of representation or assistance requested and the issue to be addressed.

(3) The volunteer or the program sponsor provides a copy of such request to the State Director.

(b) The volunteer may draft, review, testify, or make a written representation to a legislative body regarding an authorization or appropriation measure directly affecting the operation of the project or program to which he or she is assigned: *Provided:*

(1) The sponsor organization provides notification to the State Director on a quarterly basis of all activity occurring pursuant to this exception.

(2) The legislative measure relates to the funding of the project or program or affects the existence or basic structure of the project or program.

(c) Notwithstanding the foregoing exceptions, any activity by a volunteer pursuant to paragraph (b) (1) or (2) of this section shall be incidental to his or her regular work assignment.

§ 1226.10 Hatch Act restrictions.

(a) In addition to the prohibitions described above, full time volunteers are subject to the Hatch Act, Subchapter III, of Chapter 73, Title 5, United States Code. Full time volunteers shall not, directly or indirectly, actively participate in political management or in political campaigns. All volunteers retain the right to vote as they choose and to express their personal opinions on political issues or candidates. Examples of prohibited activities, include, but are not limited to,

(1) Candidacy for or service as a delegate or alternate to any political convention or service as an officer or employee thereof.

(2) Acting as an officer of a primary meeting or caucus, addressing, making motions, preparing or presenting resolutions, representing others, or otherwise taking part in such meetings or caucuses.

(3) Organizing or conducting a political meeting or rally on any political matter.

(4) Holding office as a precinct or ward leader or representative, or service on any committee of a political party. It is not necessary that the service of the volunteer itself be political in nature to fall within the prohibition.

(5) Organizing a political club, being an officer of such a club, being a member of any of its committees, or representing the members of a political club in meetings or conventions.

(6) Soliciting, collecting, receiving, disbursing or otherwise handling contributions made for political purposes.

(7) Selling or soliciting pledges for dinner tickets or other activities of po-

litical organizations or candidates, or for their benefit.

(8) Distributing campaign literature, badges, buttons, bumperstickers or posters.

(9) Publishing or being editorially connected with a newspaper or other publication generally known as partisan from a political standpoint.

(10) Writing for publication or publishing any letter or article, signed or unsigned, soliciting votes in favor of or in opposition to any political party, candidate or faction.

(11) Soliciting votes, helping get out the vote, acting as a checker, watcher or challenger for any party or faction, transporting voters to or from the polls, or transporting candidates on canvassing or speaking tours.

(12) Participation in or organizing a political parade.

(13) Initiating nominating petitions or acting as a canvasser or witness on such petitions.

(14) Being a candidate for nomination or election to a National, State, or local office.

(b) Hatch Act restrictions apply to full time volunteers at all times during their service, including off-duty hours, leave, holidays and vacations.

§ 1226.11 Part time volunteers.

(a) The provisions in this section are applicable to part time volunteers, as defined in § 1226.3(d). There are two categories of part time volunteers:

(1) Those enrolled for periods of service of at least twenty (20) hours per week for not less than twenty-six (26) consecutive weeks, as authorized under Title I, Part C of the Act, and

(2) All other part time volunteers, including Senior Companions, Foster Grandparents and Retired Senior Volunteers.

(b) All part time volunteers are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(1) When they are engaged in their volunteer assignments, in training activities, or other related activities supported by ACTION funds, or

(2) Whenever they represent themselves as ACTION volunteers, or may reasonably be perceived by others to be performing as volunteers.

(c) The restrictions described in § 1226.10, pertaining to the Hatch Act, are applicable to volunteers enrolled for periods of service of at least 20 hours per week for not less than 26 consecutive weeks, as authorized under Title I, Part C of the Act:

(1) At all times in any day on which they serve as volunteers, or when engaged in activities related to their volunteer assignments, such as training; or

(2) Whenever they represent themselves as volunteers or may reasonably be perceived by others to be performing as volunteers.

Subpart D—Sponsor Employee Activities

§ 1226.12 Sponsor employees.

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in § 1226.8 (a), (b), (c) and (d) and the exceptions in § 1226.9:

(a) Whenever they are engaged in an activity which is supported by ACTION funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives ACTION funds, or could reasonably be perceived by others as acting in such capacity.

§ 1226.13 Obligations of sponsors.

(a) It shall be the obligation of program sponsors to ensure that they:

(1) Fully understand the restrictions on volunteer activity set forth herein;

(2) Provide training to volunteers on the restrictions and ensure that all other training materials used in training volunteers are fully consistent with these restrictions;

(3) Monitor on a continuing basis the activity of volunteers for compliance with this provision;

(4) Report all violations, or questionable situations, immediately to the State Director.

(b) Failure of a sponsor to meet the requirements set forth in paragraph (a) of this section, or a violation of the rules contained herein by either the sponsor, the sponsor's employees subject to § 1226.12 or the volunteers assigned to the sponsor, at any time during the course of the grant may be deemed to be a material failure to comply with the terms and conditions of the grant as that term is used in 45 CFR 1206.1 regarding suspension and termination of assistance or a violation of the Project Memorandum of Agreement, as applicable. The sponsor shall be subject to the procedures and penalties contained in 45 CFR 1206.1.

(c) Violation by a volunteer of any of the rules and regulations set forth herein may be cause for suspension or termination as set forth in 45 CFR 1213.5-5(2) or other disciplinary action.

PART 1228—CLEARINGHOUSE REQUIREMENTS AND PROCEDURES

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1228.1 General.
1228.2 ACTION programs covered.
1228.3 Project notification and review system.
1228.4 Clearinghouse functions.
1228.5 Consultation and review.
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1228.7 Agency procedures for implementation of OMB Circular A-95.
1228.8 Roles and responsibilities.

Appendix—Clearinghouse Requirements

Authority: Office of Management and Budget Circular A-95 Revised January 2, 1976.

Source: 41 FR 21199, May 24, 1976, unless otherwise noted.

§ 1228.1 General.

Office of Management and Budget Circular No. A-95, *Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects*, Part I, establishes a network of State and area-wide planning and development clearinghouses which will aid in the coordination of Federal or federally assisted projects and programs with State, areawide, and local planning for orderly growth and development.

§ 1228.2 ACTION programs covered.

The requirements of Circular A-95 apply to the following ACTION programs listed in the *Catalog of Federal Domestic Assistance:*

72.001	Foster Grandparents Program.
72.002	Retired Senior Volunteer Program.
72.008	Senior Companion Program.

§ 1228.3 Project notification and review system.

Part I of Circular A-95 requires applicants for assistance under any of the above ACTION programs to comply with the provisions of the Project Notification and Review System in order to facilitate coordinated planning on an inter-governmental basis. The essential parts of the Project Notification and Review System are:

(a) *Notification of intent.* Any agency of State or local government or any organization undertaking to apply for assistance to a project or major substantive modification thereto under any of the above ACTION programs is required to notify both the State and areawide planning and development clearinghouses in the jurisdiction of which the project is to be located of its intent to apply for assistance at such time as it determines it will develop an application. Notification will include a summary description of the project for which assistance is sought. The summary description will contain the following information, as appropriate and to the extent available:

(1) Identity of the applicant agency or organization;

(2) The geographic location of the project to be assisted. (A map should be provided, if appropriate);

(3) A brief description of the proposed project to be assisted (A map should be to scale, estimated cost, beneficiaries, or other characteristics which will enable the clearninghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed project);

(4) The ACTION program title and number under which assistance is sought; and

(5) The estimated date the applicant expects to formally file an application.

(b) *Applicant responsibility.* Potential applicants are responsible for contacting the clearinghouses in their project location as early as possible to obtain forms and instructions for insuring expeditious clearinghouse review.

(c) *Federally recognized Indian tribes.* Applications from federally recognized Indian tribes are not subject to the requirements of Part I of Circular A-95. However, Indian tribes may voluntarily participate in the Project Notification and Review System and are encouraged to do so. ACTION will notify the appropriate State and areawide clearinghouses of any application from federally recognized Indian tribes upon their receipt.

§ 1228.4 Clearinghouse functions.

Clearinghouse functions include, but are not limited to:

(a) Evaluating the significance of proposed Federal or federally assisted projects to State, areawide, or local plans and programs;

(b) Receiving and disseminating project notifications (the State clearinghouse notifies State agencies; the areawide clearinghouse notifies local agencies) and providing liaison between such agencies and the applicant; and

(c) Providing public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to review and comment on the civil rights aspects of the project for which assistance is sought.

§ 1228.5 Consultation and review.

(a) State and areawide clearinghouses may have 30 days after receipt of a project notification in which to inform State and local or regional governments or agencies that may be affected by the proposed project and arrange, as may be necessary, to consult with the applicant thereon. The review may be completed in this period and comments may be submitted to the applicant.

(b) If the review is not completed during this period, the clearinghouse may work with the applicant in the resolution of any problems raised by the proposed projects during the period in which the application is being completed.

(c) In cases where no project notification has been submitted and the clearinghouse receives only a completed application, it may have 60 days to review the completed application. If a completed application is submitted during the first 30 days after a notification has been submitted, the clearinghouse may have 30 days plus the number of days remaining in the initial 30 days to review a completed application. Where clearinghouses have not completed their review during the 30 day notification period, they are strongly urged to give the applicant formal notice to that effect. Where reviews have been completed prior to completion of an application, an information copy will be supplied to the clearinghouse, upon request, when the application is submitted to the funding agency. Analysis of the timing requirement for clearinghouse review discloses that such review consists of two stages:

(1) *Stage 1—When only a notification of intent is submitted to the clearinghouse.* (i) Clearinghouse has 30 days to review. Clearinghouse *may* complete review and send comments to applicant.

Upon completion of application, applicant will submit an information copy to the clearinghouse, upon request, when submitting the application to ACTION for funding.

(ii) Clearinghouse *does not* complete review; notifies applicant; resolves problems, if any, with applicant; applicant completes application.

(iii) When a completed application is submitted during the first 30 days after a Notification of Intent has been submitted, clearinghouse has 30 days plus the number of days remaining in the initial 30 day notification period to complete review.

(2) *Stage 2—When only a completed application is submitted to clearinghouse.* Clearinghouse has 60 days to review.

(d) Written comments submitted to the areawide clearinghouses by other jurisdictions, agencies, or parties will be included as attachments to the comments of areawide clearinghouses, when they are at variance with the clearinghouse comments; and others from whom comments were solicited and received should be listed.

§ 1228.6 Clearinghouse comments and recommendations.

(a) Applicants will include with the completed application submitted to ACTION:

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or

(2) Where no comments have been received from a clearinghouse, a statement that the procedures outlined in §§ 1228.3 and 1228.5 have been followed and that no comments or recommendations have been received.

(b) The objectives of clearinghouse comments and recommendations are:

(1) To assure maximum consistency of the proposed project with State, areawide, and local comprehensive plans; and

(2) To assist ACTION in determining whether the project is in accord with Federal law, particularly those requiring consistency with State, areawide, or local plans. Comments or recommendations may include, but need not be limited to, information about the extent to which the proposed project:

(i) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(ii) Might be revised to increase its effectiveness or efficiency in relationship to other State, area, or local programs and projects.

(c) Applications for continuation or renewal grants or applications not submitted to or acted upon by ACTION within one year after completion of clearinghouse review will be subject to re-review upon request of the clearinghouse.

§ 1228.7 Agency procedures for implementation of OMB Circular A-95.

Part I of Circular A-95 requires ACTION to:

(a) Inform potential applicants for assistance under the programs indicated in paragraph 1228.2 above of the requirements of Part I (1) in program information materials, (2) in response to inquiries respecting application procedures, (3) in preapplication conferences, or (4) by other means which will assure earliest contact between applicant and clearinghouse;

(b) Assure that all applications for assistance under programs covered by Circular A-95 have been submitted to appropriate clearinghouses for review prior to their submission to ACTION for funding;

(c) Return applications to the applicant which do not carry evidence that both areawide and State clearinghouses have been given an opportunity to review the application, with instructions to fulfill the requirements of Part I;

(d) Insure that all applications contain a *State Application identified* (SAI) number (This is mandatory for use in notifying clearinghouses of action taken on the application);

(e) Notify such clearinghouses within seven working days of any major action taken on such applications that have been reviewed by said clearinghouses; major actions will include awards, rejections, returns for amendment, deferrals, or withdrawals;

(f) Use Standard Form 424 for the Report of Federal Action to clearinghouses;

(g) Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and ACTION approves the application substantially as submitted, ACTION will provide the clearinghouse, along with the action notice, an explanation therefor; and

(h) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, ACTION will consult with the agency assisting the referenced projects prior to acting, if it plans to approve the application.

§ 1228.8 Roles and responsibilities.

(a) *State Program Director.* The State Program Director shall: (1) Inform potential applicants for assistance under such programs of the requirements of Part I (i) in program informational materials (See below, *Clearinghouse Requirements.* ACTION Form A-780), (ii) in response to inquiries respecting application procedures,

(iii) in preapplication conferences, or (iv) by other means which will assure earliest contact between applicant and clearinghouses.

(2) Assure that all applications for assistance under programs covered by Part I have been submitted to appropriate clearinghouses for review prior to their submission to ACTION. In cases where applications are received by the State Program Office and the applicant has not submitted a Notification of Intent or an application to the State and areawide clearinghouses, the applicant should be notified to submit the application to the clearinghouses for review and that ACTION will not be able to take any funding action until the review has been completed. When the applicant receives the clearinghouse reviews, it will be necessary to complete a new application face page and forward it and any comments received to ACTION.

(3) Evaluate the comments furnished by the clearinghouses and forward his recommendation to the Project Review Board for final determination by the Regional Director.

(4) Furnish a copy of the face page of rejected, deferred, or withdrawn applications to the Grants Officer in time for him to comply with the requirement of notifying the clearinghouses within seven working days.

(b) *Regional Director.* (1) Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and ACTION approves the application substantially submitted, the Regional Director will provide the clearinghouse an explanation thereof.

(2) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the Regional Director will consult with the agency assisting the referenced projects prior to funding the application.

(c) *Grants Officer.* The Grants Officer shall serve as the coordinating official for A-95 in the Regional Office and as such shall be responsible for notifying the clearinghouses within seven working days of any major action taken on applications which have been reviewed by the clearinghouses. Major actions will include awards, rejections, deferrals, or withdrawals. The face page of the application of SF 424 will be utilized for this purpose.

APPENDIX—CLEARINGHOUSE REQUIREMENTS

Office of Management and Budget Circular No. A-95, *Evaluation, Review, and Coordination of Federal and federally Assisted Programs and Projects,* Part I, establishes clearinghouse procedures to be followed by applicants seeking Federal assistance under the following programs: Foster Grandparent Program, 72.001; Retired Senior Volunteer Program, 72.002; and Senior Companion Program, 72.008.

In applying for assistance from ACTION for one of the programs listed above, you are requested to submit a *Notification of Intent* to the State and areawide clearinghouses no later than 175 days prior to the start date shown on the application.

Applicants are urged to contact the clearinghouses at the earliest possible time to obtain forms and instructions for insuring expeditious clearinghouse review.

Your Notification of Intent must contain at a minimum a summary description of the project for which you are seeking assistance and will include:

1. Identity of the applicant agency, organization, or individual.
2. The geographic location of the project to be assisted.
3. A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local governments having plans, programs, or projects that might be affected by the proposed project.
4. The ACTION program title and number under which assistance will be sought. (See program title and number above).
5. The estimated date by which you expect to formally file an application.

It is recommended that the enclosed SF-424 be utilized for your Notification of Intent, with the concurrence of the clearinghouses.

Clearinghouses have 30 days from receipt of your notice to inform appropriate agencies of your proposed project. The review may be completed in this period and comments submitted to you.

In cases where the clearinghouses have not completed their review within 30 days, you should forward your application for assistance to the clearinghouses no later than

145 days prior to the start date on the application.

Since ACTION cannot take any action on your application until the requirements of the Circular have been met, it is most important that you submit your notification to the clearinghouses at the earliest feasible time in order to assure maximum time for effective coordination and to avoid the delay of the submission of your application to ACTION.

You must include with your application any comments made by or through the clearinghouses and complete Item 22(b) on the face page of the application.

PART 1232—NON-DISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

Subpart A—General Provisions

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Subpart D—Procedures

1232.16 Procedures.

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95-602.

SOURCE: 44 FR 31018, May 30, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 1232.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1232.2 Application.

This part applies to each recipient of Federal financial assistance from ACTION and to each program or activity that receives or benefits from such assistance, including volunteer programs such as VISTA, University Year for ACTION (UYA), Senior Companion Program (SCP), Foster Grandparent Program (FGP) and Retired Senior Volunteer Program (RSVP). This part does not apply to recipients outside the United States which receive financial assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87-293, as amended.

§ 1232.3 Definitions.

As used in this part the term:

(a) "The Act" means the Rehabilitation Act of 1973. Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and the Rehabilitation Act Amendments of 1978, Pub. L. 95-602.

(b) "Section 504" means section 504 of the Act.

(c) "Director" means the Director of ACTION.

(d) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by an ACTION official or by a recipient as a condition to becoming a recipient.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement which provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(4) A Federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance, including the provision of volunteers under the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4951, Pub. L. 93-113, as amended.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) Handicapped person.

(1) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, except that as it relates to employment or volunteer service the term "handicapped person" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment or volunteer service, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (h)(2)(i) of this section but is treated by a recipient as having such an impairment.

(i) "Qualified handicapped person" means (1) with respect to employment or volunteer service, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job or assignment in question; and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

(k) "Volunteer" and "Volunteer service" refers to any person serving as a full time or part-time volunteer under any programs authorized under the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended.

(l) "Work station" means any public or private agency, institution, organization or other entity to which volunteers are assigned by a recipient.

(Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794), sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955; Sec. 402(14), Pub. L. 93-113, 87 Stat. 398).

[44 FR 31018, May 30, 1979; 46 FR 6951, Jan. 22, 1981]

§ 1232.4 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, volunteers and beneficiaries are available to persons with impaired vision and hearing.

(f) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Federal financial assistance from ACTION because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

§ 1232.5 Assurances required.

(a) An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to ACTION. The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(b) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(c) A recipient operating a volunteer program under which volunteers are assigned to a number of work stations shall obtain an assurance from each work station that neither volunteers nor the beneficiaries they serve will be discriminated against on the basis of handicap.

§ 1232.6 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, volunteers and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of Section 504 and this part.

§ 1232.7 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of Section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of Section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* Recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) Each recipient shall, within one year of the effective date of this part, conduct a self-evaluation of its compliance with Section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each recipient shall with the assistance of and consultation with interested persons, including handicapped persons, evaluate its current policies, practices and effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 1232.8 Effect of state or local law.

The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

Subpart B—Employment and Volunteer Service Practices

§ 1232.9 General prohibitions against employment and volunteer service discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment or volunteer service under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment or volunteer service under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees or volunteers in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment and volunteer service applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment or volunteer service;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment or volunteer service, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment or volunteer service.

(d) A recipient may not participate in a contractural or other relationship that has the effect of subjecting qualified handicapped applicants, volunteers or employees, to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(f) Recipients operating a volunteer program under which volunteers are assigned to work in a number of work stations will assure that a representative sample of work stations are accessible to handicapped persons.

§ 1232.10 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant, employee or volunteer unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees or volunteers readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees or volunteers, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce or volunteer force, and

(3) The nature and cost of the accommodation needed.

§ 1232.11 Employment and volunteer selection criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 1232.12 Preemployment or pre-selection inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. For the purpose of this paragraph, "pre-employment" as applied to applicants for volunteer positions means prior to selection as a volunteer.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1232.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1232.8(b) or when a recipient is taking affirmative action pursuant to Section 503 of the Act, the recipient may invite applicants for employment or volunteer service to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment or volunteer service on the results of a medical examination conducted prior to the volunteer or employee's entrance on duty. *Provided*, That: (1) All entering volunteers or employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 1232.13 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan which sets forth in detail the steps necessary to complete the changes, and a schedule for taking those steps. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the plan shall be made available for public inspection.

§ 1232.15 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. construction shall be considered new if ground breaking takes place after the effective date of the regulation. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) Design, construction or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971), which is incorporated by reference in this part, shall constitute compliance with this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

Subpart D—Procedures

§ 1232.16 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 1203.6-1203.11 of this title.

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CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS

PART 1300—GENERAL REGULATIONS

Subpart A—Consolidated Grants to Insular Areas

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AUTHORITY: Sec. 501 of Title V of Pub. L. 95-134, the Omnibus Territories Act, as amended, 48 U.S.C. 1469a.

SOURCE: 46 FR 4923, Jan. 19, 1981, unless otherwise noted.

Subpart A—Consolidated Grants to Insular Areas

§ 1300.1 Basis and purpose.

(a) These regulations implement Title V of Pub. L. 95-134, the Omnibus Territories Act, as amended, by allowing an Insular Area: (1) To submit a single application and other supporting documentation in order to receive a single grant award consolidating the formula grant funds available for social services under certain titles of the Social Security Act; and (2) to allocate the funds among one or more of the various titles consolidated under the grant awards.

(b) The purpose of this subpart is to minimize the burden caused by existing application and reporting procedures for certain formula grants awarded to the Insular Areas by the Office of Human Development Services.

§ 1300.2 Scope.

(a) These regulations apply to the consolidation of formula grant funds for social services available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands under the Social Security Act titles listed in paragraph (b) of this section.

(b) The following formula grant funds for social services may be consolidated under these regulations:

(1) Title I—Grants to States for Old-Age Assistance and Medical Assistance for the Aged.

(2) Title IV, Part A—Aid to Families with Dependent Children.

(3) Title IV, Part B—Child Welfare Services.

(4) Title X—Grants to States for Aid to the Blind.

(5) Title XIV—Grants to States for Aid to the Permanently and Totally Disabled.

(6) Title XVI—Grants to States for Aid to the Aged, Blind, or Disabled.

(7) Title XX—Grants to States for Services (for the purposes authorized under Section 2002(a)(2)(C) of the Act).

§ 1300.3 Definitions.

(a) "Assistant Secretary" means the Assistant Secretary for Human Development Services.

(b) "Single Grant Application" means the document or documents an Insular Area must submit to HDS in any fiscal year to apply for a consolidated grant award.

(c) "Consolidated Grant Award" means the single quarterly grant award to an Insular Area, the funds for which are derived from the allocations under the programs specified in Section 1300.2

(d) "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Terrritory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 1300.4 Grant application procedures.

(a) An Insular Area may apply for a grant award consolidating two or more of the formula grant funds specified in § 1300.2(b) by submitting a single grant application, budget, and any supporting documentation, rather than the various applications and budgets which must be submitted under any of these Social Security Act titles.

(b) The single application must be submitted within time limits and in the format prescribed by the Assistant Secretary in guidelines.

§ 1300.5 Fiscal and administrative requirements.

(a) Grant funds awarded under a consolidated grant are subject to the matching funds requirements applicable to the Social Security Act titles under which the funds are made available.

(b) Any consolidated grant for any Insular Area cannot be less than the sum of all the grants which such area would otherwise be entitled to receive for such year.

(c) The provisions of Part 74 of this title establishing uniform administrative requirements and cost principles, shall apply to all consolidated grants made under this subpart.

§ 1300.6 Use of consolidated grant funds.

(a) An Insular Area may use funds awarded under a consolidated grant for that fiscal year for any social services authorized by any of the titles listed in § 1300.2(b) that are included in the consolidated grant award.

(b) Except as provided in these regulations, an Insular Area that receives funds under a consolidated grant made under this subpart must meet the statutory, regulatory, and administrative requirements applicable to the titles for which those funds are spent.

§ 1300.76 Reporting requirements.

(a) An Insular Area which receives a consolidated grant under this Subpart must submit a single report on the use of the funds to the Assistant Secretary. The single report must be in the format and contain the information prescribed by the Assistant Secretary in guidelines.

(b) Nothing in paragraph (a) of this section shall preclude the Department from continuing to carry out its responsibility to provide adequate procedures for accounting, auditing, evaluation, and reviewing any programs or activities receiving benefits from any consolidated grant awarded under this Subpart.

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, HEAD START PROGRAM

PART 1301—HEAD START GRANTS ADMINISTRATION

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AUTHORITY: 88 Stat. 2300, et seq. (42 U.S.C. 2921 et seq.).

SOURCE: 44 FR 24061, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1301.1 Purpose and scope.

This part establishes regulations applicable to program administration and grants management for all grants under the Act, including grants for technical assistance and training and grants for research, demonstration, and pilot projects.

§ 1301.2 Definitions.

For the purposes of this part, unless the context requires otherwise:

"Act" means title V of the Economic Opportunity Act of 1964, as amended.

"Approved costs" means the total budget, including both the Federal share and the non-Federal share, for carrying out the program activities provided for in an approved application for a Head Start program.

"Budget period" means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

"Community" means a city, county, a multi-city or multi-county unit within a state, an Indian reservation, or any neighborhood or other geographic area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

"Delegate agency" means a public or private non-profit organization or agency to which a grantee has delegated all or part of its responsibility for operating a Head Start program.

"Development and administrative costs" are all costs other than those which are incurred in carrying out the education, health, social service, and parent involvement functions prescribed in Part 1304 of this chapter. These costs include, but are not limited to, the personnel and other costs of overall planning, coordination, general program direction, accounting, auditing, bonding, insurance, and the allocated costs of occupying, operating, and maintaining the space utilized for these purposes.

"Head Start Agency" or "grantee" means a local public or private nonprofit agency designated to operate a Head Start program by the responsible HHS official, in accordance with Part 1302 of this chapter.

"Head Start program" means a program, funded under the Act and carried out by a Head Start agency or a delegate agency, that provides ongoing comprehensive child development services.

"Independent auditor" means an individual accountant or an accounting firm, public or private agency, association, corporation, or partnership, that is sufficiently independent of the agency being audited to render objective and unbiased opinions, conclusions, and judgments.

"Major disaster" means any natural disaster or catastrophe which is of such severity and magnitude as to directly affect the capability of the Head Start agency of agencies providing Head Start programs to the damaged community to continue the programs without an increase in the Federal share above 80 percent.

"Responsible HHS official" means the official of the Department of Health and Human Services who has authority to make grants under the Act.

"Total costs" means the sum of all approved costs incurred in operating a Head Start program during an approved budget period.

Subpart B—General Requirements

§ 1301.10 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants made under the Act:

45 CFR Part 16 Department grant appeals process (except as provided in § 1301.34)

45 CFR Part 46 Protection of Human Subjects

45 CFR Part 74 Administration of grants

45 CFR Part 75 Informal grant appeals procedures (Indirect cost rates and other cost allocations)

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81 Practice and procedure for hearings under Part 80

45 CFR Part 84 Nondiscrimination on the basis of handicap in Federally assisted programs.

(b) 45 CFR Part 74 is superseded as follows: (1) § 1301.11 of this subpart supersedes § 74.15 of Part 74 with respect to insurance and bonding of private, non-profit Head Start agencies; and (2) § 1301.12 of this subpart supersedes § 74.61 of Part 74 with respect to audit requirements for all Head Start agencies.

§ 1301.11 Insurance and bonding.

(a) Private nonprofit Head Start agencies and their delegate agencies shall carry reasonable amounts of student accident insurance, liability insurance for accidents of their premises, and transportation liability insurance.

(b) Private nonprofit Head Start and delegate agencies shall make arrangements for bonding officials and employees authorized to disburse program funds.

§ 1301.12 Annual audit of Head Start programs.

(a) An audit of the Head Start program covering the prior budget period of each Head Start agency and its delegate agencies, if any, shall be made by an independent auditor to determine: (1) Whether the agency's financial statements are accurate; (2) whether the agency is complying with the terms and conditions of the grant; and (3) whether appropriate financial and administrative procedures and controls have been installed and are operating effectively. Head Start agencies shall either include delegate agency audits as a part of their own audits or provide for separate independent audits of their delegate agencies.

(b) Upon a written request showing necessity, the responsible HHS official may approve a period other than the prior budget period to be covered by the annual audit.

(c) Unless otherwise approved by the responsible HHS official, the report of the audit shall be submitted to the responsible HHS official, in the manner and form prescribed by him or her, within 4 months after the prior budget period.

§ 1301.13 Accounting system certification.

(a) Upon request by the responsible HHS official, each Head Start agency or its delegate agency shall submit an accounting system certification, prepared by an independent auditor, stating that the accounting system or systems established by the Head Start agency, or its delegate, has appropriate internal controls for safeguarding assets, checking the accuracy and reliability of accounting data, and promoting operating efficiency.

(b) A Head Start agency shall not delegate any of its Head Start program responsibilities to a delegate agency prior to receiving a certification that the delegate agency's accounting system meets the requirements specified in paragraph (a) of this section.

Subpart C—Federal Financial Assistance

§ 1301.20 Matching requirements.

(a) Federal financial assistance granted under the act for a Head Start program shall not exceed 80 percent of the total costs of the program, unless: (1) An amount in excess of that percentage is approved under section 1301.21; or (2) the Head Start agency received Federal financial assistance in excess of 80 percent for any budget period falling within fiscal year 1973 or fiscal year 1974. Under the circumstances described in clause (3) of the preceding sentence, the agency is entitled to receive the same percentage of Federal financial assistance that it received during such budget periods.

(b) The non-Federal share will not be required to exceed 20 percent of the total costs of the program.

§ 1301.21 Criteria for increase in Federal financial assistance.

The responsible HHS official, on the basis of a written application and any supporting evidence he or she may require, will approve financial assistance in excess of 80 percent if he or she concludes that the Head Start agency has made a reasonable effort to meet its required non-Federal share but is unable to do so; and the Head Start agency is located in a county: (a) That has a personal per capita income of less that $3,000 per year; or (b) that has been involved in a major disaster.

Subpart D—Personnel and General Administration

§ 1301.30 General requirements.

Head Start agencies and delegate agencies shall conduct the Head Start program in an effective and efficient manner, free of political bias or family favoritism. Each agency shall also provide reasonable public access to information and to the agency's records pertaining to the Head Start program.

§ 1301.31 Personnel policies.

(a) Head Start agencies shall establish personnel policies for themselves and their delegate agencies. At a minimum, such policies must govern the following: staff qualifications, recruitment and selection, classification of positions, salaries, employee benefits (including leave, holidays, overtime, and fringe benefits), conflicts of interest, official travel, career development, performance evaluations, and employee management relations (including employee grievances and adverse actions).

(b) The policies shall be in writing, approved by the Head Start Policy Council or Committee, and made available to all Head Start and delegate agency employees.

§ 1301.32 Limitation on costs of development and administration.

(a) The costs of developing and administering a Head Start program shall not exceed 15 percent of the total costs of such program, unless the responsible HHS official approves a higher percentage for periods not to exceed 6 months, as necessary to carry out the purpose of the program.

(b) Each Head Start agency shall provide with its application a statement that the costs of development and administration will not exceed 15 percent of the total cost.

§ 1301.33 Delegation of program operations.

Federal financial assistance is not available for program operations where such operations have been delegated to a delegate agency by a Head Start agency unless the delegation of program operations is made by a written agreement and has been approved by the responsible HHS official before the delegation is made.

§ 1301.34 Grantee appeals.

An agency receiving a grant under the Act for technical assistance and training, or for a research, demonstration, or pilot project may appeal adverse decisions in accordance with Part 16 of this title. Head Start agencies are also subject to the appeal procedures in Part 16 except appeals by those agencies for suspension, termination and denial of refunding are subject to Part 1303 of this title.

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

Subpart A—General

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1302.1 Purpose and scope.
1302.2 Definitions.
1302.3 Consultation with public officials and consumers.
1302.4 Transfer of unexpended balances.
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Subpart B—Basis for Selection of Grantees

1302.10 Selection among applicants.
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Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

1302.20 Grantee to show both legal status and financial viability.
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1302.23 Suspension or termination of grantee which shows legal status but not financial viability.
1302.24 Denial of refunding of grantee.
1302.25 Control of funds of grantee scheduled for change.

AUTHORITY: Sec. 602(n), 78 Stat. 530, 42 U.S.C. 2942(n); Delegation of Authorities to Secretary of Health and Human Services, 38 FR 19291.

SOURCE: 44 FR 24062, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1302.1 Purpose and scope.

The purpose of this part is to set forth policies and procedures for the selection, initial funding and refunding of Head Start grantees and for the selection of replacement grantees in the event of the voluntary or involuntary termination, or denial of refunding, of Head Start programs. It particularly provides for consideration of the need for selection of a replacement grantee where the continuing eligibility (legal status) and fiscal capability (financial viability) of a grantee to operate a Head Start program is cast in doubt by the cessation of funding under section 519 of the Act or by the occurrence of some other major change. It is intended that Head Start programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grantees be fully protected.

§ 1302.2 Definitions.

As used in this part—

"Act"means Title V of The Economic Opportunity Act of 1964, as amended.

"Approvable application" means an application for a Head Start program, either as an initial application or as an application to amend an approved application governing an on-going Head Start program, which, in addition to showing that the applicant has legal status and financial viability, provides for comprehensive services for children and families and for effective and responsible administration which are in conformity with the Act and applicable regulations, the Head Start Manual and Head Start policies.

"Community action agency" means a public or private nonprofit agency or organization designated as a community action agency by the Director of the community Services Administration pursuant to section 210(a) or section 210(d) of the Act.

"Community action program" means a program operated by a community action agency.

"Financial viability" means the capability of an applicant or the continuing capability of a grantee to furnish the non-Federal share of the cost of operating an approvable or approved Head Start program.

"Head Start grantee" or "grantee" means a public or private nonprofit agency or organization whose application to operate a Head Start program pursuant to section 514 of the Act has been approved by the responsible HHS official.

"Legal status" means the existence of an applicant or grantee as a public agency or organization under the law of the State in which it is located, or existence as a private nonprofit agency or organization as a legal entity recognized under the law of the State in which it is located. Existence as a private non-profit agency or organization may be established under applicable State or Federal law.

"Responsible HHS official" means the official of the Department of Health and Human Services who has authority to make grants under the Act.

§ 1302.3 Consultation with public officials and consumers.

Responsible HHS officials will consult with Governors, or their representatives, appropriate local general purpose government officials, and Head Start Policy Council and other appropriate representatives of communities to be served on the proposed replacement of Head Start grantees.

§ 1302.4 Transfer of unexpended balances.

When replacing a grantee, unexpended balances of funds in the possession of such grantee in the fiscal year following the fiscal year for which the funds were appropriated may be transferred to the replacement grantee if the approved application of the replacement grantee provides for the continuation of the Head Start services without significant change to the same enrollees and their parents and undertakes to offer employment to the staff of the terminating grantee. A letter of concurrence in the change should be obtained from the terminating grantee whenever possible.

§ 1302.5 Notice for show cause and hearing.

(a) Except in emergency situations, the responsible HHS official will not suspend financial assistance under the Act unless the grantee has been given an opportunity, in accordance with Part 1303, Subpart D, of this chapter, to show cause why such action should not be taken.

(b) The responsible HHS official will not terminate a grant, suspend a grant for longer than 30 days, or deny refunding to a grantee, unless the grantee has been given an opportunity for a hearing in accordance with Part 1303 of this chapter.

Subpart B—Bases for Selection of Grantees

§ 1302.10 Selection among applicants.

The basis for making a selection among applicants for a Head Start program shall be the extent to which the application selected reasonably promises the most effective and responsible Head Start program of the approvable applications submitted in terms of: (a) The cost-effectiveness of the program proposed to be provided; (b) the qualifications and experience of the applicant in planning, organizing, and providing comprehensive child development services at the community level; (c) the provisions made for direct participation of parents in the planning, conduct and administration of the program; (d) the opportunities provided for employment of target area residents and career development opportunities for paraprofessional and other staff; (e) the suitability of the facilities and equipment proposed to be utilized in carrying out the Head Start program; and (f) the administrative and fiscal capabilities of the applicant to administer all Head Start programs carried out in the community.

§ 1302.11 Selection among applicants to replace grantee.

The bases for making a selection among applicants which submit approvable applications to replace a grantee, in addition to the basis in § 1302.10 of this part, shall be:

(a) The extent to which provision is made for a continuation of services to the eligible children who have been participating as enrollees in the program;

(b) The extent to which provision is made for continuation of services to the target area or areas served by the program; and

(c) The extent to which provision is made for continued employment by the applicant of the qualified personnel of the existing program.

§ 1302.12 Priority for previously selected Head Start agencies.

Before selecting Head Start agency, the responsible HHS official, in addition to considering the factors specified in §§ 1302.10 and 1302.11, will give priority to an agency which was receiving funds under the Act on January 4, 1975, to operate a Head Start program.

Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

§ 1302.20 Grantee to show both legal status and financial viability.

(a) Upon the occurrence of a change in the legal condition of a grantee or of a substantial diminution of the financial resources of a grantee, or both, for example, such as might result from cessation of grants to the grantee under section 514 of the Act, the grantee is required within 30 days after the effective date of the regulations in this Part or the date the grantee has notice or knowledge of the change, whichever is later, to show in writing to the satisfaction of the responsible HHS official that it has and will continue to have legal status and financial viability. Failure to make this showing may result in suspension, termination or denial of refunding.

(b) The responsible HHS official will notify the grantee in writing of the decision as to the grantee's legal status and financial viability within 30 days after receiving the grantee's written submittal.

(c) When it is consistent with proper and efficient administration, the responsible HHS official may extend a grantee's program year to end on the date when a change in its legal condition or a substantial diminution of financial resources, or both, is scheduled to take place.

§ 1302.21 Grantee shows legal status but not financial viability.

(a) If a grantee shows legal status but impaired financial viability the responsible HHS official will entertain a timely request for amendment of the grantee's approved application which restores the grantee's financial viability either by a reduction in the program which produces minimum disruption to services and functions, or by an amendment which incorporates essential functions and services not previously funded as part of the total cost of the Head Start program, and, therefore, requires an increase in the amount of the Head Start grant but which will not result in a Federal share of the total cost of the Head Start program in excess of the percentage authorized by the Act or applicable regulations. In considering such a request which includes an increase in the Head Start grant the responsible HHS official will take into account the funds available to him for obligation and whether the proposed increase is consistent with that distribution of Head Start funds which:

(1) Maximizes the number of childen served within his area of responsibility, or in the case of experimental or demonstration programs, the experimental or demonstration benefits to be achieved, and

(2) Maintains approximately the same distribution of Head Start program funds to States as exist during the fiscal year in which his decision is made.

(b) A request for amendment will be considered to be timely if it is included with the written submittal required by § 1302.20(a) of this part, submitted within 30 days after receiving the notice required by § 1302.20(b) of this part, or submitted as a part of a timely application for refunding.

(c) The grantee will be notified in writing by the responsible HHS official within 30 days after submission of the requested amendment of the decision to approve or disapprove the requested amendment. If the requested amendment is disapproved the notice will contain a statement of the reasons for disapproval.

§ 1302.22 Suspension or termination of grantee which shows financial viability but not legal status.

If a grantee fails to show that it will continue to have legal status after the date of change even though it may show financial viability, the grant shall be suspended or terminated or refunding shall be denied as of the date of change. If it appears reasonable to the responsible HHS official that the deficiency in legal status will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or the date of submission of a timely request for amendment. If such correction has not been made within the 30 day period the grant shall be terminated.

§ 1302.23 Suspension or termination of grantee which shows legal status but not financial viability.

(a) If the date of change of financial viability precedes or will precede the end of the grantee's program year the grant will be suspended or terminated on that date, or, if a request for amendment has been submitted under § 1302.21 of this part, upon written notice of disapproval of the requested amendment, whichever is later. If it appears reasonable to the responsible HHS official that the deficiency in financial viability will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or notice of disapproval. If such correction has not been made within the 30 day period the grant will be terminated.

§ 1302.24 Denial of refunding of grantee.

(a) If the date of change will coincide with or will come after the end of the program year and the grantee has notice or knowledge of such change prior to the end of the program year any action taken to approve the grantee's application for refunding for the following program year shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and financial viability and on any requested amendment submitted by the grantee. If the requested amendment is disapproved the responsible HHS official may extend the program year in accordance with § 1302.20(c) of this part.

(b) If the date of change coincides with the end of the program year and the grantee does not have notice or knowledge of the change prior thereto and the grantee's application for refunding for the following program year has been approved, such approval shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and viability and on any requested financial amendment submitted by the grantee.

(c) If the date of change will coincide with or will come after the end of the program year and if the responsible HHS official has prior notice thereof from the grantee or other official source such as the Community Services Administration action to approve any application for refunding submitted by the grantee shall be deferred pending decision by the responsible HHS official on the grantee's legal status and financial viability and any requested amendment submitted by the grantee.

(d) When the responsible HHS official determines to approve a requested amendment for refunding he will approve it for the full term of the proposed program period, if that period as approved is no longer than a program year.

§ 1302.25 Control of funds of grantee scheduled for change.

Responsible HHS officials will place strict controls on the release of grant funds to grantees which are scheduled for change by cessation of their grants under section 519 of the Act. Specifically, the following controls will be established:

(a) Funds will be released on a monthly basis regardless of the form of grant payment.

(b) Funds released each month will be limited to the amount required to cover actual disbursements during that period for activities authorized under the approved Head Start program.

(c) The amount of funds released must be approved each month by the responsible HHS official.

PART 1303—PROCEDURES FOR APPEALS FOR HEAD START DELEGATE AGENCIES, AND FOR OPPORTUNITIES TO SHOW CAUSE AND HEARINGS FOR HEAD START GRANTEES

Subpart A—General

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1303.11 Procedures for appeal by current delegate agency.
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1303.20 Denial of refunding.
1303.21 Notice of intended denial and opportunity for a hearing to show cause.
1303.22 Hearing to show cause. Decision on appeal and review.
1303.23 Time and place of hearing.
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Subpart D—Suspension and Termination of Financial Assistance to Grantees

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1303.30 Purpose.
1303.31 Suspension on notice and opportunity to show cause.
1303.32 Summary suspension and opportunity to show cause.
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1303.37 Modification of procedures by consent.

AUTHORITY: 88 Stat. 2304 (42 U.S.C. 2928h).

SOURCE: 44 FR 24065, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1303.1 Purpose and application.

This part effectuates section 519 of the Act as it applies to grantees and delegate agencies engaged in or wanting to engage in the carrying out of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified adverse action by grantees; and the procedures for reasonable notice and opportunity to show cause in cases of intended or actual suspension of financial assistance by the responsible HHS official or by ACYF and for a full and fair hearing for grantees in cases of denial of refunding or termination of financial assistance by the responsible HHS official or by ACYF.

§ 1303.2 Definitions.

As used in this part—

"Act" means Title V, Economic Opportunity Act of 1964, as amended.

"ACYF" means the Administration for Children, Youth and Families in the Department of Health and Human Services, and includes regional staff.

"Commissioner" means the Commissioner for Children, Youth and Families.

"Delegate agency" means a public or private non-profit organization or agency to which a grantee has delegated the carrying on of all or part of its Head Start programs.

"Current delegate agency" means a public or private non-profit agency which would like to continue to carry on all or part of the Head Start program of the grantee under an arrangement with and as delegate of the grantee.

"Grantee" means the local public or private non-profit agency which has been designated as a Head Start agency under section 514 of the Act and which has been granted assistance by the responsible HHS official or by ACYF to carry on a Head Start program.

"Program account" means the identification of a grouping of related program activities recognized by ACYF which, as an individual grouping or in combination with another grouping or other groupings, constitutes the Head Start program for which a Head Start grantee is furnished Federal financial assistance, and which serves as a unit for planning, budgeting, administering, and reporting the grantee's Head Start program. Examples of program accounts are: Full Year Head Start—Part Day; Full Year Head Start—Full Day; Summer Head Start; Parent and Child Centers; and Head Start Training and Technical Assistance.

"Prospective delegate agency" means a public or private nonprofit agency or organization which would like to serve as a delegate agency.

"Responsible HHS official" means the official who is authorized to make the grant of assistance in question, or his designee.

"Substantial rejection" means that a grantee requires that the funding of a current or prospective delegate agency be reduced to 80 percent or less of the current level of operations or of the amount requested in the application; or that a grantee requires that a program account which has cost or which would cost at least 25 percent of the total cost of the Head Start program in question be eliminated or reduced to 80 percent or less of the current level of operations or of the amount requested in the application.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by the granting agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 1303.3 Right to counsel, counsel fees, travel.

(a) Parties to proceedings under this part, including ACYF and delegate agencies which have the right to participate in informal meetings or termination hearings, have the right to be represented by counsel. If a party which is a delegate agency or a grantee does not have an attorney acting in that capacity as a regular member of its staff or on a retainer arrangement, such a party may designate an attorney to represent it in the proceedings and it may transfer sufficient funds from its current operating funds to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the express written approval of the responsible HHS official. Travel and per diem expenses may be paid to such attorney from program funds in conformity with the Standard Government Travel Regulations. A delegate agency or a grantee also may designate two persons to attend and participate in proceedings under this part to which it is a party. Travel and per diem expenses may be paid to such persons from program funds in conformity with the Standard Government Travel Regulations.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses. The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, shall make payment therefor to the party by way of reimbursement from currently available funds.

§ 1303.4 Other remedies.

The procedures established by this part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

Subpart B—Appeals by Delegate Agencies

§ 1303.10 Appeal on notice of rejection or failure to act.

(a) A grantee shall give prompt, fair and adequate consideration to applications submitted by current or prospective delegate agencies to operate Head Start programs. It shall notify an applicant in writing within 30 days after receiving an application of its decision to reject it either wholly or substantially. The notice shall contain a statement of the reasons for the decision, and a statement that the applicant has a right to appeal the decision to the responsible HHS official in writing within 15 days after receipt of the notice.

(b) If a grantee fails to act upon the application of a current or prospective delegate agency to operate a Head Start program within 30 days after receiving the application, such agency has a right to appeal the grantee's failure to act in writing to the responsible HHS official within 15 days after the end of the 30 day period. In the case of a current delegate agency the failure of the grantee to act within 30 days after receiving the application shall be deemed to be a rejection.

(c) A grantee shall not reject the application of a current delegate agency on the basis of defects or deficiencies in the application or in the operation of the project without first notifying the agency of what the defects and deficiencies consist, offering to assist the agency, including by the provision of technical assistance, in making corrections, and giving the agency reasonable opportunity to make corrections.

§ 1303.11 Procedures for appeal by current delegate agency.

(a) Within 10 days after receiving the written appeal of a current delegate agency, the responsible HHS official will notify both parties, the appellant and the grantee, in writing that the appellant shall have the opportunity to submit written material to the responsible HHS official and to meet informally with him and the grantee to show cause why the application should not be denied; that the grantee shall have the opportunity to submit written material for the responsible HHS official and to be present at the informal meeting with him to support its decision on the appellant's application; that the time within which the parties shall submit the written material to the responsible HHS official shall be no later than 14 days after the notice by the responsible HHS official was mailed; and that the appellant may request, no later than 14 days after the notice by the responsible HHS official was mailed, the informal meeting with the responsible HHS official and the grantee. A copy of this subpart and Subpart A of this part will be included with the notice mailed by the responsible HHS official to parties so that they may inform themselves of the nature of the written materials to be submitted, the opportunity for written rebuttal, the issues that are involved in the appeal, and the remedies available.

(b) The current delegate agency shall submit to the responsible HHS official a copy of the material it submitted to the grantee in, and in connection with, its application. It shall also submit to the responsible HHS official a written statement setting forth:

(1) Whether, prior to the grantee's decision or failure to act, the grantee advised the appellant of defects and deficiencies in its application or in the operation of its project, as appropriate.

(i) If so, when and how was such advice given.

(ii) If so, the defects and deficiencies called to the appellant's attention.

(2) Whether the grantee provided the appellant reasonable opportunity to correct the defects and deficiencies referred to in paragraph (b)(1)(ii) of this section.

(i) If so, details of the opportunity that was given.

(ii) If so, whether the grantee provided technical advice and consultation with respect to the correction of the defects and deficiencies.

(A) If the answer to paragraph (b)(2)(ii) of this section is affirmative, describe the assistance provided; and

(B) Describe what the appellant did about correcting the defects and deficiencies.

(3) When and how the grantee notified the appellant of its decision.

(4) Whether the grantee told the appellant the reasons for its decision. If so, how such reasons were communicated to the appellant and what they were.

(5) If it is the appellant's position that the grantee acted arbitrarily or unfairly, the reason why the appellant takes this position.

(6) Any other facts and circumstances which the appellant believes will support its appeal.

(c) In connection with the appeal the grantee shall submit a written statement to the responsible HHS official setting forth:

(1) Whether, prior to rejection of the application, or the failure to act within 30 days after its receipt, the grantee advised the appellant of defects and deficiencies in the application or in the operation of the appellant's project, as appropriate.

(i) If so, when and how was such advice given.

(ii) If so, the defects or deficiencies called to the appellant's attention.

(2) Whether the grantee provided the appellant an opportunity to correct the defects and deficiencies referred to in paragraph (c) of this section.

(i) If so, details of the opportunity that was given.

(ii) If so, whether the grantee provided technical advice and consultation with respect to correction of the defects and deficiencies.

(A) If the answer to paragraph (c)(2)(ii) of this section is affirmative, describe the assistance provided; and

(B) What the appellant did about correcting the defects and deficiencies.

(3) When and how the grantee notified the appellant of the decision.

(4) Whether the grantee told the appellant the reasons for the decision. If so, how such reasons were communicated to the appellant and, what they were.

(5) Why the grantee takes the position that it acted reasonably and fairly in arriving at its decision or in its failure to act.

(6) Any other facts and circumstances which the grantee believes will support its decision or its failure to act.

(d) At the time of submitting the written statement, each party shall furnish a copy of its statement to the other party.

(e) If the appellant does not request an informal meeting, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply shall be submitted to the responsible HHS official within 10 days after the copy of the other party's written statement was mailed.

(f) If the appellant requests an informal meeting, the meeting will be scheduled by the responsible HHS official as soon as possible, but not sooner than 14 days after the written notice to the parties was mailed by the responsible HHS official, unless the appellant and the grantee consent to an earlier meeting time. The responsible HHS official shall designate either the appropriate regional office or the place where the appellant or grantee is located as the place for holding the meeting.

§ 1303.12 Decision on appeal and review.

(a) The decision of the responsible HHS official will take into account the material submitted in writing and the information presented at the informal meeting. Unless it is found by the responsible HHS official that the grantee acted unfairly and did not have a rational basis for its decision, or its failure to act, or that the grantee failed to comply with paragraph (c), § 1303.10, the grantee will be sustained. The decision of the responsible HHS official will be made within 5 days after the informal meeting. This decision, including a statement of the reasons therefor, will be in writing, and will be mailed immediately to the appellant and the grantee. If the decision is made on the basis of written materials only, the decision will be made within 14 days of the receipt of the materials.

(b) If the decision of the responsible HHS official sustains the decision or failure to act of the grantee, the appellant may, within 14 days of the date of mailing, make a written request for review of the decision by the Commissioner. If the decision of the responsible HHS official does not sustain the decision or failure to act of the grantee, the grantee may, within 14 days of the date of mailing, make a written request for review of the decision by the Commissioner. Upon such request by either party the Commissioner, or his designee, will review the decision of the responsible HHS official, the written material submitted by the appellant and grantee, and a report of the information presented at the informal meeting, and, on the basis of this review, make the final decision. The decision of the grantee will be sustained unless it is found that it acted unfairly and without a rational basis for its decision or its failure to act, or that the grantee failed to comply with paragraph (c), § 1303.10. The final decision will be made no later than 30 days after receipt of the request for review. The Commissioner will inform the appellant, the grantee, and the responsible HHS official in writing of the final decision and the reasons therefor.

§ 1303.13 Remedies.

(a) If the decision of the responsible HHS official does not sustain the grantee and there is no timely written request for review by the Commissioner, or if the final decision does not sustain the grantee, the responsible HHS official will remand the application to the grantee for prompt consideration or reconsideration and decision in accordance with the criteria set forth in § 1303.12 (a) and (b) for decision on the appeal, other than failure to comply with paragraph (c), § 1303.10. The grantee shall report its decision and the reasons therefor in writing to the responsible HHS official within 10 days after the date of the remand. If the responsible HHS official finds that the grantee gave fair consideration to the application on remand and that its decision has a rational basis, the appeal will be dismissed. If the responsible HHS official finds that the grantee failed to give fair consideration to the application on remand and that its decision does not have a rational basis, or if the grantee fails to act within the 10 days, the responsible HHS official will entertain an application by the appellant for a direct grant. If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action the responsible HHS official deems appropriate in the circumstances. If such an application is not approved, the responsible HHS official will take whatever action he deems appropriate in the circumstances.

(b) If the grantee is not sustained by the responsible HHS official because of failure to comply with paragraph (c), § 1303.10 and there is no timely request for review by the Commissioner, or if the final decision does not sustain the grantee because of such failure, the responsible HHS official will remand the application to the grantee for prompt compliance therewith. Within 60 days after such remand, but not earlier than 30 days, the grantee shall make a written report to the responsible HHS official on compliance activities and progress made. The report shall state whether the grantee will or will not approve the application at that time. If the grantee would reject the application, the report shall contain a detailed statement of the reasons on which rejection would be based. A copy of the report shall be made available to the appellant when the grantee submits it to the responsible HHS official. The appellant shall have 10 days after receiving the report within which to reply thereto in writing to the responsible HHS official. If, on the basis of the written material, the responsible HHS official finds that the grantee, on remand, complied with paragraph (c), § 1303.10, but that the defects and deficiencies continue uncorrected, the appeal will be dismissed. If the responsible HHS official finds that the grantee did not comply on remand the responsible HHS official will entertain an application from the appellant for a direct grant. If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action the responsible HHS official deems appropriate in the circumstances. If such an application is not approved, the responsible HHS official will take whatever action he deems appropriate in the circumstances.

(c) If without fault on the part of the appellant its operating funds are exhausted before its appeal has been decided, ACYF will furnish sufficient funds for the maintenance of its current level of operations until a final decision has been reached.

§ 1303.14 Procedures for appeal by rejected prospective delegate agency.

(a) Within 10 days after receiving the written appeal of a rejected prospective delegate agency the responsible HHS official will notify both parties, the appellant and the grantee, in writing that they shall have the opportunity to submit written material in connection with the appeal; and that the time within which the written material shall be submitted to the responsible HHS official shall be no later than 14 days after the notice by the responsible HHS official was mailed. A copy of this subpart and Subpart A of this Part shall be included with the notice mailed by the responsible HHS official to the parties so that they may inform themselves of the nature of the written material to be submitted, the opportunity for written rebuttal, the issues that are involved in the appeal, and the remedies available.

(b) The appellant shall submit to the responsible HHS official copies of the material it submitted to the grantee in, and in connection with, its application. It shall also submit a written statement setting forth the same material by § 1303.11(b)

(c) In connection with the appeal the grantee shall submit a written statement to the responsible HHS official setting forth the same material required by § 1303.11(c)

(d) At the time of submitting the written statements, each party shall furnish a copy of its statement to the other party.

(e) Each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply shall be submitted to the responsible HHS official within 10 days after the copy of the other party's written statement was mailed.

§ 1303.15 Decision on appeal.

(a) The responsible HHS official may designate a person to review the written material and make a written recommended decision. The final decision will be made by the responsible HHS official no later than 14 days after the receipt of the written material.

(b) A person designated to review the written material and make a recommended decision or the responsible HHS official may ask either or both parties to submit additional written material. A copy of any such request shall be furnished to each party, and each party shall furnish a copy of any such additional written material to the other party.

(c) The recommended, if any, and final decisions will be based upon the written record resulting from the materials submitted by the parties. The decision of the grantee will be sustained unless it is found by the responsible HHS official that it acted unfairly and without a rational basis for its decision. The final decision of the responsible HHS official will be transmitted, in writing, immediately to the appellant and the grantee.

§ 1303.16 Remedies.

If the final decision does not sustain the grantee, the responsible HHS official will remand the application to the grantee for prompt consideration or reconsideration and decision in accordance with the criteria set forth in § 1303.12 (a) and (b) for decision on the appeal. The grantee shall report its decision and the reasons therefor in writing to the responsible HHS official within 10 days after the date of the remand. If the responsible HHS official finds that the grantee gave fair consideration to the application on remand and that its decision had a rational basis, the appeal shall be dismissed. If the responsible HHS official finds that the grantee failed to give fair consideration to the application on remand and that its decision did not have a rational basis, or if the grantee fails to act within the 10 days, the responsible HHS official will entertain an application by the appellant for a direct grant. If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action the responsible HHS official deems appropriate in the circumstances. If such an application is not approved, the responsible HHS official will take whatever action he deems appropriate in the circumstances.

§ 1303.17 Procedures when grantee fails to act on application of prospective delegate agency.

(a) Within 10 days after receiving the written appeal based upon the failure of the grantee to act upon the application of a prospective delegate agency within 30 days, the responsible HHS official will notify both parties, the appellant and the grantee, in writing that they shall have the opportunity to submit written material in connection with the appeal; and that the time within which the written material shall be submitted to the responsible HHS official shall be no later than 14 days after the notice by the responsible HHS official was mailed. A copy of this subpart and subpart A shall be included with the notice mailed by the responsible HHS official to the parties so that they may inform themselves of the nature of the written material to be submitted, the opportunity for written rebuttal, the issues that are involved in the appeal, and the remedies available.

(b) The appellant shall submit the following materials in writing to the responsible HHS official:

(1) Copies of the material it submitted to the grantee in, and in connection with, its application.

(2) A description of, or copies of, any communications, written or oral, between the appellant and the grantee during the 30 day period.

(3) Any other facts and circumstances which the appellant believes to be relevant to its appeal.

(c) The grantee shall submit the following materials in writing to the responsible HHS official:

(1) A description of, or copies of, any communications, written or oral, between the appellant and the grantee during the 30 day period.

(2) Any other facts and circumstances which the grantee believes to be relevant.

§ 1303.18 Decision on appeal.

(a) The responsible HHS official may designate a person to review the written material and make a written recommended decision. The final decision will be made by the responsible HHS official no later than 14 days after receipt of written material.

(b) The person, if any, designated to review the written material and make a recommended decision or the responsible HHS official may ask either or both parties to submit additional written material. A copy of any such request shall be furnished to each party, and each party shall furnish a copy of any such additional written material to the other party.

(c) The recommended and final decisions will be based upon the written record resulting from the material submitted by the parties. The final decision of the responsible HHS official will be transmitted, in writing, immediately to the appellant and the grantee.

§ 1303.19 Remedies.

The responsible HHS official will remand the application to the grantee for prompt consideration and decision in accordance with the criteria, other than failure to comply with paragraph (c), § 1303.10, set forth in § 1303.12 (a) and (b) for decision on the appeal. The grantee shall report its decision and the reasons therefor in writing to the responsible HHS official within 10 days after the date of the remand. The responsible HHS official may request additional information from either party if he deems it necessary to a decision. If the responsible HHS official finds that the grantee gave fair consideration to the application on remand and that its decision has a rational basis, the appeal shall be dismissed. If the responsible HHS official finds that the grantee failed to give fair consideration to the application on remand and that its decision does not have a rational basis, or if the grantee fails to act within the 10 days, the responsible HHS official may entertain an application by the appellant for a direct grant. If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action the responsible HHS official deems appropriate in the circumstances. If such an application is not approved, the responsible HHS official will take whatever action he deems appropriate in the circumstances.

Subpart C—Denial of Grantee's Application for Refunding

§ 1303.20 Denial of refunding.

A grantee's application for refunding may be denied by the responsible HHS official for circumstances related to the particular grant such as ineffective or improper use of Federal funds or for failure to comply with applicable law, regulations, terms and conditions, or, in accordance with Part 1302 of this chapter, upon selection by the responsible HHS official of another applicant or loss by the grantee of legal status or financial viability. Such denial shall be pursuant to reasonable notice and opportunity for a full and fair hearing.

§ 1303.21 Notice of intended denial and opportunity for hearing to show cause.

When an intention to deny a grantee's application for refunding is arrived at on the basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that the grantee has the opportunity for a full and fair hearing on whether refunding should be denied. If the grantee wants such a hearing the grantee shall request it in writing within a period of time specified in the notice which is not less than 10 days from the date of sending the notice. The responsible HHS official immediately will transmit a copy of the request to the Commissioner.

§ 1303.22 Hearing to show cause. Decision on appeal and review.

(a) The hearing will be scheduled by the responsible HHS official for the earliest practicable date, but not later than 30 days after the grantee's request. Consideration shall be given by the responsible HHS official to a request by a grantee to advance or postpone the scheduled date of a hearing. The hearing shall afford the grantee a full and fair opportunity to demonstrate why the application for refunding should not be denied. ACYF will have the burden of justifying the proposed action to deny refunding. However, if the basis of the proposed denial of refunding is the failure of the grantee to take action required by law, regulation, or other requirement specified in §1303.20, or the alleged loss of legal status or financial viability, the grantee shall have the burden of proving that such action was timely taken, or that it has legal status or financial viability. Where the issues otherwise relate to the selection of another applicant by the responsible HHS official in accordance with Part 1302 of this Chapter, ACYF will have the burden of justifying the selection of the other applicant.

(b) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible HHS official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACYF including the allegations contained in the notice of intention to deny refunding.

(c) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.23 Time and place of hearing.

The hearing shall be held in the appropriate regional office or the place where the grantee is located, at a time and place fixed by the responsible HHS official unless he determines that the convenience of ACYF, or of the parties or their representatives, requires that another place be selected.

§ 1303.24 Conduct of hearing.

(a) The presiding officer at the hearing shall be a person who is an administrative law judge appointed under 5 U.S.C. 3105 or who has served as such an administrative law judge, or, if the Commissioner is unable to make a timely designation of either of such persons as presiding officer, a person deemed qualified by the Commissioner who was not directly involved in the action under review. In any event the Commissioner will designate the presiding officer as promptly as possible.

(b) The presiding officer shall conduct the hearing in accordance with all the provisions of § 1303.35 of Subpart D execpt that "notice of termination" or "termination" wherever such terms appear therein shall read "notice of denial of refunding" or "denial of refunding" as the context requires.

§ 1303.25 Initial decision, exceptions, final decision and review.

(a) The decision of the presiding official shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirements with which it is found that the grantee has failed to comply, if any; the ways in which the grantee has ineffectively or improperly used Federal funds, if any; or the bases for justifying, or the absence of justification for, the selection of another applicant. The decision shall be made within 14 days after the conclusion of the hearing and mailed promptly to all parties.

(b) The decision of the presiding officer may provide for continued financial assistance to the grantee and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) The decision of the presiding officer shall be an initial decision. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible HHS official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible HHS official will, within 20 days of the mailing of the exceptions, review the initial decision and issue his final decision in the matter, including the reasons therefor. The decision of the responsible HHS official may increase, modify, approve, vacate, or mitigate any terms, conditions, or other provisions imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a final decision will be made by the responsible HHS official and a written copy will be given to the grantee.

(e) The grantee may request the Commissioner to review a final decision by the responsible HHS official which provides for the denial of refunding. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Commissioner or his designee will consider the reasons stated by the grantee for seeking the review and will sustain or overrule the final decision of the responsible HHS official or remand the matter to the responsible HHS official for further hearing or consideration. During the course of his review the Commissioner or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. The final decision by the Commissioner will be made not later than 30 days after receipt of the request for review.

(f) If without fault on the part of the grantee its operating funds are exhausted before a final decision has been reached on whether its application for refunding will be denied, ACYF will furnish sufficient funds to the grantee to maintain its current level of operations until such final decision is made.

§ 1303.26 Modification of procedures by consent.

In any proceeding under this subpart the responsible HHS official may alter, eliminate or modify any of the procedural provisions of this subpart, with the written consent of the grantee.

Subpart D—Suspension and Termination of Financial Assistance to Grantees

§ 1303.30 Purpose.

(a) This subpart establishes rules and procedures for the suspension and termination of financial assistance under the Act, for the failure of a grantee to comply with applicable laws, regulations, guidelines, standards, instructions, assurances, terms and conditions, or, in accordance with Part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

§ 1303.31 Suspension on notice and opportunity to show cause.

(a) The responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.30 pursuant to notice and opportunity to show cause why assistance should not be suspended. However, in emergency cases where the responsible HHS official determines summary action is appropriate, the alternative summary procedures of § 1303.32 will be followed.

(b) The responsible HHS official will notify the grantee by registered or certified mail or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least 7 days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than 7 days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting which will not be less than 7 days after the grantee's request is received by ACYF.

(d) The responsible HHS official may on his own initiative establish a time and place for a meeting. In no event will such meeting be scheduled less than 7 days after the notice of intention to suspend was sent to the grantee.

(e) The responsible HHS official may in his discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(f) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, he will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition to the intended suspension and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(g) Within 3 days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(h) The responsible HHS official will consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within 5 days after the conclusion of the informal meeting. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, he may suspend financial assistance in whole or in part and under such terms and conditions as he specifies.

(i) Notice of such suspension will be promptly transmitted to the grantee by registered or certified mail and shall become effective upon delivery. Suspension shall not exceed 28 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with § 1303.33, the suspension of financial assistance will be rescinded.

(j) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

NOTE: Willful misapplication of funds may violate section 301 of the Economic Opportunity Amendments of 1967 (42 U.S.C. 2703), or other criminal statutes.

(k) The responsible HHS official may modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, in the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 28 days unless termination proceedings are initiated in accordance with § 1303.33 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§ 1303.32 Summary suspension and opportunity to show cause.

(a) The responsible HHS official may suspend financial assistance without prior notice and opportunity to show cause if he determines that immediate suspension is necessary because of a serious risk of:

(1) Substantial injury to or loss of project funds or property, or

(2) Violation of a Federal, State, or local criminal statute, or

(3) Violation of section 576(b) of the Act or of ACYF directive implementing that section of the Act, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(b) The notice of summary suspension will be given to the grantee by registered or certified mail or by telegram and shall become effective upon delivery. The notice will include the following items:

(1) The effective date of the suspension.

(2) The grounds for the suspension.

(3) The extent of terms and conditions of any partial suspension.

(4) A statement forbidding the grantee to make any new expenditures or incur any new obligations in connection with the suspended portion of the program.

(5) A statement advising the grantee that it has an opportunity to show cause why the suspension should be rescinded.

(c) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within 7 days after the grantee's request is received by ACYF. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to initiate termination proceedings at any time even though financial assistance to the grantee has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible HHS official will rescind the suspension pending the outcome of the termination proceedings.

(d) Notices of summary suspension shall also be furnished by the responsible HHS official and by the grantee to delegate agencies in the same manner as notices of intent to suspend as set forth in § 1303.32 (f) and (g). Delegate agencies shall have the right to participate in the informal meeting as set forth in said paragraphs.

(e) The effective period of a summary suspension of financial assistance may not exceed 10 days unless termination proceedings are initiated in accordance with § 1303.33 or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the grantee, in accordance with paragraph (c) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(f) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance shall continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official. Such a decision will be made within 5 days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information elicited at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension in effect for an additional 7 days.

(g) The provisions of § 1303.31(j) with respect to expenditures during a period of suspension are applicable to summary suspensions.

§ 1303.33 Termination and hearing.

(a) The responsible HHS official may terminate financial assistance to a grantee in whole or in part for failure to comply with any requirement or for loss of legal status or financial viability as stated in § 1303.30 whether or not such financial assistance has been suspended. Such termination will be pursuant to reasonable notice and the opportunity for a full and fair hearing. If financial assistance has been suspended, the suspension will be rescinded upon initiation of termination proceedings.

(b) If the responsible HHS official believes that alleged noncompliance with any requirement stated in § 1303.30 is serious enough to warrant termination of financial assistance, whether or not financial assistance has been suspended, he will so notify the grantee by registered or certified mail or telegram. The notice will include:

(1) A statement that there are grounds which justify the proposed termination and that sets forth the specific reasons therefor;

(2) If the activities of a delegate agency are the bases, in whole or in part, for the reasons for the proposed termination, the identity of the delegate agency;

(3) Information that the matter has been set down for hearing at a stated time and place or that the grantee has a right to request a hearing in writing within a period of time, specified in the notice which is not later than 10 days from the date of sending notice.

(c) The responsible HHS official immediately will transmit a copy of the grantee's request for a hearing to the Commissioner.

(d) The termination hearing will be scheduled by the responsible HHS official for the earliest practicable date, but not later than 30 days after the grantee's request. Consideration shall be given by the responsible HHS official to a request by a grantee to advance or postpone the scheduled date of a hearing. The hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements specified in § 1303.30. ACYF will have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement specified in § 1303.30, the grantee shall have the burden of proving that such action was timely taken.

(e) If a grantee requests a hearing, it shall send a copy of its request to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice. The copies of the request shall be sent to these delegate agencies at the same time the grantee's request is made to ACYF. The grantee shall promptly send ACYF a list of the delegate agencies to which it has sent the copies and the date on which they were sent.

(f) If the responsible HHS official informs a grantee that a proposed termination action has been set down for hearing, the grantee shall within 5 days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the responsible HHS official a list of all delegate agencies notified and the date of notification.

(g) If the responsible HHS official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with § 1303.35, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(h) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(i) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible HHS official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACYF including the allegations contained in the notice of termination.

(j) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.34 Time and place of hearing.

The termination hearing shall be held in Washington, D.C., or in the appropriate regional office, at a time and place fixed by the responsible HHS official unless he determines that the convenience of ACYF, or of the parties or their representatives, requires that another place be selected.

§ 1303.35 Conduct of hearing.

The presiding officer at the hearing shall be a person who is an administrative law judge appointed under 5 U.S.C. 3105 or who has served as such an administrative law judge, or, if the Commissioner is unable to make a timely designation of either of such persons as presiding officer, a person deemed qualified by the Commissioner who was not directly involved in the action under review. In any event the Commissioner will designate the presiding officer as promptly as possible.

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) After the notice described in paragraph (i) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney, designated by the General Counsel of the Department of Health and Human Services, who has not represented ACYF or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (i) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(e) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(f) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(g) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(h) All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(i) The responsible HHS official will send the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity the facts relied on as justifying termination and the ACYF requirements which it is alleged the grantee has violated. The notice will be served and filed not later than 10 days prior to the hearing.

(j) The grantee and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to ACYF and the presiding officer of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(k) All papers and documents filed or sent to a party shall be signed by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person, except that the effective date of the notice that there appear to be grounds which warrant terminating financial assistance shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of ACYF.

(l) Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(m) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(n) If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions but only if all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange at his expense for a transcript to be made of the proceedings and shall upon request of any other party, furnish such party with a copy of the transcript.

(o) Official notice may be taken of a public document, or part therof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of ACYF. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(p) After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions.

§ 1303.36 Initial decision, exceptions, final decision and review.

(a) The decision of the presiding officer shall set forth his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall so specify the requirements with which it is found that the grantee has failed to comply, if any. The decision shall be made within 14 days after the conclusion of the hearing and mailed promptly to all parties.

(b) The decision of the presiding officer may provide for termination of financial assistance to the grantee in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act.

(c) The decision of the presiding officer shall be an initial decision. Any party may, within 20 days of the mailing of such initial decision or such longer period of time as the presiding officer specifies, file with the responsible HHS official his exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible HHS official will, within 20 days of the mailing of the exceptions, review the initial decision and issue his final decision in the matter, including the reasons therefor. The decision of the responsible HHS official may increase, modify, approve, vacate, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a final decision will be made by the responsible HHS official and a written copy will be given to the grantee.

(e) The grantee may request the Commissioner to review a final decision by the responsible HHS official which provides for the termination of financial assistance. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Commissioner or his designee will consider the reasons stated by the grantee for seeking the review and will approve, modify, vacate or mitigate any sanction imposed by the responsible HHS official or remand the matter to the responsible HHS official for further hearing or consideration. During the course of his review the Commissioner or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. The final decision by the Commissioner will be made no later than 30 days after receipt of the request for review.

§ 1303.37 Modification of procedures by consent.

In any proceeding under this subpart the responsible HHS official may alter, eliminate or modify any of the procedural provisions of this subpart, with the consent of the grantee and, in the case of a termination hearing, with the additional consent of all delegate agencies that have a right to participate in the hearing. Such consent must be in writing and be included in the hearing record.

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

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APPENDIX A—PROGRAM OPTIONS FOR PROJECT HEAD START

APPENDIX B—HEAD START POLICY MANUAL: THE PARENTS

AUTHORITY: 88 Stat. 2304 (42 U.S.C. 2928h).

SOURCE: 40 FR 27562, June 30, 1975, unless otherwise noted.

Subpart A—General

§ 1304.1-1 Purpose and application.

This part sets out the goals of the Head Start program as they may be achieved by the combined attainment of the objectives of the basic components of the program, with emphasis on the program performance standards necessary and required to attain those objectives. With the required development of plans covering the implementation of the performance standards, grantees and delegate agencies will have firm bases for operations most likely to lead to demonstrable benefits to children and their families. While compliance with the performance standards is required as a condition of Federal Head Start funding, it is expected that the standards will be largely self-enforcing. This part applies to all Head Start grantees and delegate agencies.

§ 1304.1-2 Definitions.

As used in this part:

(a) The term "OCD" means the Office of Child Development, Office of Human Development in the U.S. Department of Health and Human Services, and includes appropriate regional office staff.

(b) The term "responsible HHS official" means the official who is authorized to make the grant of assistance in question, or his designee.

(c) The term "Director" means the Director of the Office of Child Development.

(d) The term "grantee" means the public or private non-profit agency which has been granted assistance by OCD to carry on a Head Start program.

(e) The term "delegate agency" means a public or private nonprofit organization or agency to which a grantee has delegated the carrying on of all or part of its Head Start program.

(f) The term "goal" means the ultimate purpose or interest toward which total Head Start program efforts are directed.

(g) The term "objective" means the ultimate purpose or interest toward which Head Start program component efforts are directed.

(h) The term "program performance standards" or "performance standards" means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(i) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

§ 1304.1-3 Head Start Program goals.

(a) The Head Start Program is based on the premise that all children share certain needs, and that children of low income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start program approach is based on the philosophy that:

(1) A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services, and that

(2) The child's entire family, as well as the community must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child's development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives and standards of a comprehensive program are adhered to.

(b) The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low income families. By social competence is meant the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health, nutritional needs, and other factors that enable a child to function optimally. The Head Start program is a comprehensive developmental approach to helping children achieve social competence. To the accomplishment of this goal, Head Start objectives and performance standards provide for:

(1) The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet. The improvement of the family's attitude toward future health care and physical abilities.

(2) The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.

(3) The enhancement of the child's mental processes and skills with particular attention to conceptual and communications skills.

(4) The establishment of patterns and expectations of success for the child, which will create a climate of confidence for present and future learning efforts and overall development.

(5) An increase in the ability of the child and the family to relate to each other and to others.

(6) The enhancement of the sense of dignity and self-worth within the child and his family.

§ 1304.1-4 Performance standards plan development.

Each grantee and delegate agency shall develop a plan for implementing the performance standards prescribed in Subparts B, C, D, and E of this part for use in the operation of its Head Start program (hereinafter called "plan," or "performance standards plan"). The plan shall provide that the Head Start program covered thereby shall meet or exceed the performance standards. The plan shall be in writing and shall be developed by the appropriate professional Head Start staff of the grantee or delegate agency with cooperation from other Head Start staff, with technical assistance and advice as needed from personnel of the Regional Office and professional consultants, and with the advice and concurrence of the policy council or policy committee. The plan must be reviewed by grantee or delegate agency staff and the policy council or policy committee at least annually and revised and updated as may be necessary.

§ 1304.1-5 Performance standards implementation and enforcement.

(a) Grantees and delegate agencies must be in compliance with or exceed the performance standards prescribed in Subparts B, C, D, and E, of this part at the commencement of the grantee's program year next following July 1, 1975, effective date of the regulations in this part, or 6 months after that date, whichever is later, and thereafter, unless the period for full compliance is extended in accordance with paragraph (f) of this section.

(b) If the responsible HHS official as a result of information obtained from program self-evaluation, pre-review, or routine monitoring, is aware or has reason to believe that a Head Start program, with respect to performance standards other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, is not in compliance with performance standards, he shall notify the grantee promptly in writing of the deficiencies and inform the grantee that it, or if the deficiencies are in a Head Start program operated by a delegate agency, the delegate agency, has a period stated in the notice not to exceed 90 days to come into compliance. If the notice is with respect to a delegate agency, the grantee shall immediately notify the delegate agency and inform it of the time within which the deficiencies must be corrected. Upon receiving the notice the grantee or delegate agency shall immediately analyze its operations to determine how it might best comply with the performance standards. In this process it shall review, among other things, its utilization of all available local resources, and whether it is receiving the benefits of State and other Federal programs for which it is eligible and which are available. It shall review and realign where feasible program priorities, operations, and financial and manpower allocations. It shall also consider the possibility of choosing an alternate program option for the delivery of Head Start Services in accordance with OCD Notice N-30-334-1, Program Options for Project Head Start, attached hereto as Appendix A, which the grantee, with OCD concurrence, determines that it would be able to operate as a quality program in compliance with performance standards.

(c) The grantee or delegate agency shall report in writing in detail its efforts to meet the performance standards within the time given in the notice to the responsible HHS official. A delegate agency shall report through the grantee. If the reporting agency, grantee or delegate agency, determines that it is unable to comply with the performance standards, the responsible HHS official shall be notified promptly in writing by the grantee, which notice shall contain a description of the deficiencies not able to be corrected and the reasons therefor. If insufficient funding is included as a principal reason for inability to comply with performance standards, the notice shall specify the exact amount, and basis for, the funding deficit and efforts made to obtain funding from other sources.

(d) The responsible HHS official on the basis of the reports submitted pursuant to paragraph (c) of this section, will undertake to assist grantees, and delegate agencies through their grantees, to comply with the performance standards, including by furnishing or by recommending technical assistance.

(e) If the grantee or delegate agency has not complied with the performance standards, other than those for which the time for compliance has been extended in accordance with paragraph (f) of this section, within the period stated in the notice issued under paragraph (b) of this section, the grantee shall be notified promptly by the responsible HHS official of the commencement of suspension or termination proceedings or of the intention to deny refunding, as may be appropriate, under Part 1303 (appeals procedures) of this chapter.

(f) The time within which a grantee or delegate agency shall be required to correct deficiencies in implementation of the performance standards may be extended by the responsible HHS official to a maximum of one year, only with respect to the following deficiencies:

(1) The space per child provided by the Head Start program does not comply with the Education Services

performance standard but there is no risk to the health or safety of the children;

(2) The Head Start program is unable to provide Medical or Dental Treatment Services as required by Health Services Performance Standards because funding is insufficient and there are no community or other resources available;

(3) The services of a mental health professional is not available or accessible to the program as required by the Health Services Performance Standards; or

(4) The deficient service is not able to be corrected within the 90 days notice period, notwithstanding full effort at compliance, because of lack of funds and outside community resources, but it is reasonable to expect that the services will be brought into compliance within the extended period, and, the overall high quality of the Head Start program otherwise will be maintained during the extension.

Subpart B—Education Services Objectives and Performance Standards

§ 1304.2-1 Education services objectives.

The objectives of the Education Service component of the Head Start program are to:

(a) Provide children with a learning environment and the varied experiences which will help them develop socially, intellectually, physically, and emotionally in a manner appropriate to their age and stage of development toward the overall goal of social competence.

(b) Integrate the educational aspects of the various Head Start components in the daily program of activities.

(c) Involve parents in educational activities of the program to enhance their role as the principal influence on the child's education and development.

(d) Assist parents to increase knowledge, understanding, skills, and experience in child growth and development.

(e) Identify and reinforce experience which occur in the home that parents can utilize as educational activities for their children.

§ 1304.2-2 Education services plan content: Operations.

(a) The education services component of the performance standards plan shall provide strategies for achieving the education objectives. In so doing it shall provide for program activities that include an organized series of experiences designed to meet the individual differences and needs of participating children, the special needs of handicapped children, the needs of specific educational priorities of the local population and the community. Program activities must be carried out in a manner to avoid sex role stereotyping. In addition, the plan shall provide methods for assisting parents in understanding and using alternative ways to foster learning and development of their children.

(b) The education services component of the plan shall provide for:

(1) *A supportive social and emotional climate* which:

(i) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group, activities;

(ii) Gives children many opportunities for success through program activities;

(iii) Provides an environment of acceptance which helps each child build ethnic pride, a positive self-concept, enhance his individual strengths, and develop facility in social relationships.

(2) Development of intellectual skills by:

(i) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing;

(ii) Promoting language understanding and use in an atmosphere that encourages easy communication among children and between children and adults;

(iii) Working toward recognition of the symbols for letters and numbers according to the individual developmental level of the children;

(iv) Encouraging children to organize their experiences and understand concepts; and

(v) Providing a balanced program of staff directed and child initiated activities.

(3) Promotion of physical growth by:

(i) Providing adequate indoor and outdoor space, materials, equipment, and time for children to use large and small muscles to increase their physical skills; and

(ii) Providing appropriate guidance while children are using equipment and materials in order to promote children's physical growth.

(c) The education services component of the plan shall provide for a program which is individualized to meet the special needs of children from various populations by:

(1) Having a curriculum which is relevant and reflective of the needs of the population served (bilingual/bicultural, multi-cultural, rural, urban, reservation, migrant, etc.);

(2) Having staff and program resources reflective of the racial and ethnic population of the children in the program.

(i) Including persons who speak the primary language of the children and are knowledgeable about their heritage; and, at a minimum, when a majority of the children speak a language other than English, at least one teacher or aide interacting regularly with the children must speak their language; and,

(ii) Where only a few children or a single child speak a language different from the rest, one adult in the center should be available to communicate in the native language;

(3) Including parents in curriculum development and having them serve as resource persons (e.g., for bilingual-bicultural activities).

(d) The education services component of the plan shall provide procedures for on-going observation, recording and evaluation of each child's growth and development for the purpose of planning activities to suit individual needs. It shall provide, also, for integrating the educational aspects of other Head Start components into the daily education services program.

(e) The plan shall provide methods for enhancing the knowledge and understanding of both staff and parents of the educational and developmental needs and activities of children in the program. These shall include:

(1) Parent participation in planning the education program, and in center, classroom and home program activities;

(2) Parent training in activities that can be used in the home to reinforce the learning and development of their children in the center;

(3) Parent training in the observation of growth and development of their children in the home environment and identification of and handling special developmental needs;

(4) Participation in staff and staff-parent conferences and the making of periodic home visits (no less than two) by members of the education staff;

(5) Staff and parent training, under a program jointly developed with all components of the Head Start program, in child development and behavioral developmental problems of preschool children; and

(6) Staff training in identification of and handling children with special needs and working with the parents of such children, and in coordinating relevant referral resources.

§ 1304.2-3 Education services plan content: Facilities.

(a) The education services component of the plan shall provide for a physical environment conducive to learning and reflective of the different stages of development of the children. Home-based projects must make affirmative efforts to achieve this environment. For center-based programs, space shall be organized into functional areas recognized by the children, and space, light, ventilation, heat, and other physical arrangements must be consistent with the health, safety, and developmental needs of the children. To comply with this standard:

(1) There shall be a safe and effective heating system;

(2) No highly flammable furnishings or decorations shall be used.

(3) Flammable and other dangerous materials and potential poisons shall be stored in locked cabinets or storage facilities accessible only to authorized persons;

(4) Emergency lighting shall be available in case of power failure;

(5) Approved, working fire extinguishers shall be readily available;

(6) Indoor and outdoor premises shall be kept clean and free, on a daily basis, of undesirable and hazardous material and conditions;

(7) Outdoor play areas shall be made so as to prevent children from leaving the premises and getting into unsafe and unsupervised areas;

(8) Paint coatings in premises used for care of children shall be determined to assure the absence of a hazardous quantity of lead;

(9) Rooms shall be well lighted;

(10) A source of water approved by the appropriate local authority shall be available in the facility; and adequate toilets and handwashing facilities shall be available and easily reached by children;

(11) All sewage and liquid wastes shall be disposed of through a sewer system approved by an appropriate, responsible authority, and garbage and trash shall be stored in a safe and sanitary manner until collected;

(12) There shall be at least 35 square feet of indoor space per child available for the care of children (i.e., exclusive of bathrooms, halls, kitchen, and storage places). There shall be at least 75 square feet per child outdoors; and

(13) Adequate provisions shall be made for handicapped children to ensure their safety and comfort.

Evidence that the center meets or exceeds State or local licensing requirements for similar kinds of facilities for fire, health and safety shall be accepted as prima facie compliance with the fire, health and safety requirements of this section.

(b) The plan shall provide for appropriate and sufficient furniture, equipment and materials to meet the needs of the program, and for their arrangement in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. The equipment and materials shall be:

(1) Consistent with the specific educational objectives of the local program;

(2) Consistent with the cultural and ethnic background of the children;

(3) Geared to the age, ability, and developmental needs of the children;

(4) Safe, durable, and kept in good condition;

(5) Stored in a safe and orderly fashion when not in use;

(6) Accessible, attractive, and inviting to the children; and

(7) Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

Subpart C—Health Services Objectives and Performance Standards

§ 1304.3-1 Health services general objectives.

The general objectives of the health services component of the Head Start program are to:

(a) Provide a comprehensive health services program which includes a broad range of medical, dental, mental health and nutrition services to preschool children, including handicapped children, to assist the child's physical, emotional, cognitive and social development toward the overall goal of social competence.

(b) Promote preventive health services and early intervention.

(c) Provide the child's family with the necessary skills and insight and otherwise attempt to link the family to an ongoing health care system to ensure that the child continues to receive comprehensive health care even after leaving the Head Start program.

§ 1304.3-2 Health Services Advisory Committee.

The plan shall provide for the creation of a Health Services Advisory Committee whose purpose shall be advising in the planning, operation and evaluation of the health services program and which shall consist of Head Start parents and health services providers in the community and other specialists in the various health disciplines. (Existing committees may be modified or combined to carry out this function.)

§ 1304.3–3 Medical and dental history, screening, and examinations.

(a) The health services component of the performance standards plan shall provide that for each child enrolled in the Head Start program a complete medical, dental and developmental history will be obtained and recorded, a thorough health screening will be given, and medical and dental examinations will be performed. The plan will provide also for advance parent or guardian authorization for all health services under this subpart.

(b) Health screenings shall include:

(1) Growth assessment (head circumference up to two years old), height, weight and age.

(2) Vision testing.

(3) Hearing testing.

(4) Hemoglobin or hematocrit determination.

(5) Tuberculin testing indicated in OCD Head Start Guidance Material.

(6) Urinalysis.

(7) Based on community health problems, other selected screenings where appropriate, e.g., sickle cell anemia, lead poisoning, and intestinal parasites.

(8) Assessment of current immunization status.

(9) During the course of health screening, procedures must be in effect for identifying speech problems, determining their cause, and providing services.

(10) Identification of the special needs of handicapped children.

(c) Medical examinations for children shall include:

(1) Examination of all systems or regions which are made suspect by the history or screening test.

(2) Search for certain defects in specific regions common or important in this age group, i.e., skin, eye, ear, nose, throat, heart, lungs, and groin (inguinal) area.

(d) The plan shall provide, also, in accordance with local and state health regulations that employed program staff have initial health examinations, periodic check-ups, and are found to be free from communicable disease; and, that voluntary staff be screened for tuberculosis.

§ 1304.3–4 Medical and dental treatment.

(a) The plan shall provide for treatment and follow-up services which include:

(1) Obtaining or arranging for treatment of all health problems detected. (Where funding is provided by non-Head Start funding sources there must be written documentation that such funds are used to the maximum feasible extent. Head Start funds may be used only when no other source of funding is available).

(2) Completion of all recommended immunizations—diptheria, pertussis, tetanus (DPT), polio, measles, German measles. Mumps immunization shall be provided where appropriate.

(3) Obtaining or arranging for basic dental care services as follows:

(i) Dental examination.

(ii) Services required for the relief of pain or infection.

(iii) Restoration of decayed primary and permanent teeth.

(iv) Pulp therapy for primary and permanent teeth as necessary.

(v) Extraction of non-restorable teeth.

(vi) Dental prophylaxis and instruction in self-care oral hygiene procedures.

(vii) Application of topical fluoride in communities which lack adequate fluoride levels in the public water supply.

(b) There must be a plan of action for medical emergencies. (Indicated in OCD Head Start Guidance Material.)

§ 1304.3–5 Medical and dental records.

The plan shall provide for: (a) The establishment and maintenance of individual health records which contain the child's medical and developmental history, screening results, medical and dental examination data, and evaluation of this material, and up-to-date information about treatment and follow-up; (b) forwarding, with parent consent, the records to either the school or health delivery system or both when the child leaves the program; and (c) giving parents a summary of the record which includes information on immunization and follow-up treatment; and (d) utilization of the Health Program Assessment Report (HPAR); and (e) assurance that in all cases parents will be told the nature of the data to be collected and the uses to which the data will be put, and that the uses will be restricted to the stated purposes.

§ 1304.3-6 Health education.

(a) The plan shall provide for an organized health education program for program staff, parents and children which ensures that:

(1) Parents are provided with information about all available health resources;

(2) Parents are encouraged to become involved in the health care process relating to their child. One or both parents should be encouraged to accompany their child to medical and dental exams and appointments;

(3) Staff are taught and parents are provided the opportunity to learn the principles of preventive health, emergency first-aid measures, and safety practices;

(4) Health education is integrated into on-going classroom and other program activities.

(5) The children are familiarized with all health services they will receive prior to the delivery of those services.

§ 1304.3-7 Mental health objectives.

The objectives of the mental health part of the health services component of the Head Start program are to:

(a) Assist all children participating in the program in emotional, cognitive and social development toward the overall goal of social competence in coordination with the education program and other related component activities;

(b) Provide handicapped children and children with special needs with the necessary mental health services which will ensure that the child and family achieve the full benefits of participation in the program;

(c) Provide staff and parents with an understanding of child growth and development, an appreciation of individual differences, and the need for a supportive environment;

(d) Provide for prevention, early identification and early intervention in problems that interfere with a child's development;

(e) Develop a positive attitude toward mental health services and a recognition of the contribution of psychology, medicine, social services, education and other disciplines to the mental health program; and

(f) Mobilize community resources to serve children with problems that prevent them from coping with their environment.

§ 1304.3-8 Mental health services.

(a) The mental health part of the plan shall provide that a mental health professional shall be available, at least on a consultation basis, to the Head Start program and to the children. The mental health professional shall:

(1) Assist in planning mental health program activities;

(2) Train Head Start staff;

(3) Periodically observe children and consult with teachers and other staff;

(4) Advise and assist in developmental screening and assessment;

(5) Assist in providing special help for children with atypical behavior or development, including speech;

(6) Advise in the utilization of other community resources and referrals;

(7) Orient parents and work with them to achieve the objectives of the mental health program; and

(8) Take appropriate steps in conjunction with health and education services to refer children for diagnostic examination to determine whether their emotional or behavior problems have a physical basis.

(b) The plan shall also provide for:

(1) Attention to pertinent medical and family history of each child so that mental health services can be made readily available when needed;

(2) Use of existing community mental health resources;

(3) Coordination with the education services component to provide a program keyed to individual developmental levels;

(4) Confidentiality of records;

(5) Regular group meetings of parents and program staff;

(6) Parental consent for special mental health services;

(7) Opportunity for parents to obtain individual assistance; and,

(8) Active involvement of parents in planning and implementing the individual mental health needs of their children.

§ 1304.3-9 Nutrition objectives.

The objectives of the nutrition part of the health services component of the Head Start program are to:

(a) Help provide food which will help meet the child's daily nutritional needs in the child's home or in another clean and pleasant environment, recognizing individual differences and cultural patterns, and thereby promote sound physical, social, and emotional growth and development.

(b) Provide an environment for nutritional services which will support and promote the use of the feeding situation as an opportunity for learning;

(c) Help staff, child and family to understand the relationship of nutrition to health, factors which influence food practices, variety of ways to provide for nutritional needs and to apply this knowledge in the development of sound food habits even after leaving the Head Start program;

(d) Demonstrate the interrelationships of nutrition to other activities of the Head Start program and its contribution to the overall child development goals; and

(e) Involve all staff, parents and other community agencies as appropriate in meeting the child's nutritional needs so that nutritional care provided by Head Start complements and supplements that of the home and community.

§ 1304.3-10 Nutrition services.

(a) The nutrition services part of the health services component of the performance standards plan must identify the nutritional needs and problems of the children in the Head Start program and their families. In so doing account must be taken of:

(1) The nutrition assessment data (height, weight, hemoglobin hematocrit) obtained for each child;

(2) Information about family eating habits and special dietary needs and feeding problems, especially of handicapped children; and,

(3) Information about major community nutrition problems.

(b) The plan, designed to assist in meeting the daily nutritional needs of the children, shall provide that:

(1) Every child in a part-day program will receive a quantity of food in meals (preferably hot) and snacks which provides at least ⅓ of daily nutritional needs, with consideration for meeting any special needs of children, including the child with a handicapping condition;

(2) Every child in a full-day program will receive snack(s), lunch, and other meals as appropriate which will provide ½ to ⅔ of daily nutritional needs depending on the length of the program;

(3) All children in morning programs who have not received breakfast at the time they arrive at the Head Start program will be served a nourishing breakfast;

(4) The kinds of food served conform to minimum standards for meal patterns indicated in OCD Head Start Guidance Material;

(5) The quantities of food served conform to recommended amounts indicated in OCD Head Start guidance materials; and,

(6) Meal and snack periods are scheduled appropriately to meet children's needs and are posted along with menus; e.g., breakfast must be served at least 2½ hours before lunch, and snacks must be served at least 1½ hours before lunch or supper.

(c) The plan shall undertake to assure that the nutrition services contribute to the development and socialization of the children by providing that:

(1) A variety of foods which broaden the child's food experience in addition to those that consider cultural and ethnic preferences is served;

(2) Food is not used as punishment or reward, and that children are encouraged but not forced to eat or taste;

(3) The size and number of servings of food reflect consideration of individual children's needs;

(4) Sufficient time is allowed for children to eat;

(5) Chairs, tables, and eating utensils are suitable for the size and develop-

mental level of the children with special consideration for meeting the needs of children with handicapping conditions;

(6) Children and staff, including volunteers, eat together sharing the same menu and a socializing experience in a relaxed atmosphere; and

(7) Opportunity is provided for the involvement of children in activities related to meal service. (For example: family style service.)

(d) The plan shall set forth an organized nutrition education program for staff, parents, and children. This program shall assure that:

(1) Meal periods and food are planned to be used as an integral part of the total education program;

(2) Children participate in learning activities planned to effect the selection and enjoyment of a wide variety of nutritious foods;

(3) Families receive education in the selection and preparation of foods to meet family needs, guidance in home and money management and help in consumer education so that they can fulfill their major role and responsibility for the nutritional health of the family;

(4) All staff, including administrative, receive education in principles of nutrition and their application to child development and family health, and ways to create a good physical, social and emotional environment which supports and promotes development of sound food habits and their role in helping the child and family to achieve adequate nutrition.

(e) The plan shall make special provision for the involvement of parents and appropriate community agencies in planning, implementing, and evaluating the nutrition services. It shall provide that:

(1) The Policy Council or Committee and the Health Services Advisory Committee have opportunity to review and comment on the nutrition services;

(2) The nutritional status of the children will be discussed with their parents;

(3) Information about menus and nutrition activities will be shared regularly with parents;

(4) Parents are informed of the benefits of food assistance programs; and

(5) Community agencies are enlisted to assist eligible families participate in food assistance programs.

(f) The plan shall provide for compliance with applicable local, State, and Federal sanitation laws and regulations for food service operations including standards for storage, preparation and service of food, and health of food handlers, and for posting of evidence of such compliance. The plan shall provide, also, that vendors and caterers supplying food and beverages comply with similar applicable laws and regulations.

(g) The plan shall provide for direction of the nutrition services by a qualified full-time staff nutritionist or for periodic and regularly scheduled supervision by a qualified nutritionist or dietitian as defined in the Head Start Guidance Material. Also, the plan shall provide that all nutrition services staff will receive preservice and in-service training as necessary to demonstrate and maintain proficiency in menu planning, food purchasing, food preparation and storage, and sanitation and personal hygiene.

(h) The plan shall provide for the establishment and maintenance of records covering the nutrition services budget, expenditures for food, menus utilized, numbers and types of meals served daily with separate recordings for children and adults, inspection reports made by health authorities, recipes and any other information deemed necessary for efficient operation.

Subpart D—Social Services Objectives and Performance Standards

§ 1304.4-1 Social services objectives.

The objectives of the social services component of the performance standards plan are to:

(a) Establish and maintain an outreach and recruitment process which systematically insures enrollment of eligible children.

(b) Provide enrollment of eligible children regardless of race, sex, creed, color, national origin, or handicapping condition.

(c) Achieve parent participation in the center and home program and related activities.

(d) Assist the family in its own efforts to improve the condition and quality of family life.

(e) Make parents aware of community services and resources and facilitate their use.

§ 1304.4-2 Social services plan content.

(a) The social services plan shall provide procedures for:

(1) Recruitment of children, taking into account the demographic makeup of the community and the needs of the children and families;

(2) Recruitment of handicapped children;

(3) Providing or referral for appropriate counseling;

(4) Emergency assistance or crisis intervention;

(5) Furnishing information about available community services and how to use them;

(6) Follow-up to assure delivery of needed assistance;

(7) Establishing a role of advocacy and spokesman for Head Start families;

(8) Contacting of parent or guardian with respect to an enrolled child whose participation in the Head Start program is irregular or who has been absent four consecutive days; and

(9) Identification of the social service needs of Head Start families and working with other community agencies to develop programs to meet those needs.

(b) The plan shall provide for close cooperation with existing community resources including:

(1) Helping Head Start parent groups work with other neighborhood and community groups with similar concerns;

(2) Communicating to other community agencies the needs of Head Start families and ways of meeting these needs;

(3) Helping to assure better coordination, cooperation, and information sharing with community agencies;

(4) Calling attention to the inadequacies of existing community services, or to the need for additional services, and assisting in improving available services, or bringing in new services; and

(5) Preparing and making available a community resource list to Head Start staff and families.

(c) The plan shall provide for the establishment, maintenance, and confidentiality of records of up-to-date, pertinent family data, including completed enrollment forms, referral and follow-up reports, reports of contacts with other agencies, and reports of contacts with families.

Subpart E—Parent Involvement Objectives and Performance Standards

§ 1304.5-1 Parent involvement objectives.

The objectives of the parent involvement component of the performance standards plan are to:

(a) Provide a planned program of experiences and activities which support and enhance the parental role as the principal influence in their child's education and development.

(b) Provide a program that recognizes the parent as:

(1) Responsible guardians of their children's well being.

(2) Prime educators of their children.

(3) Contributors to the Head Start program and to their communities.

(c) Provide the following kinds of opportunities for parent participation:

(1) Direct involvement in decision making in program planning and operations.

(2) Participation in classroom and other program activities as paid employees, volunteers or observers.

(3) Activities for parents which they have helped to develop.

(4) Working with their own children in cooperation with Head Start staff.

§ 1304.5-2 Parent Involvement Plan content: Parent participation.

(a) The basic parent participation policy of the Head Start program, with which all Head Start programs must comply as a condition of being granted financial assistance, is contained in Head Start Policy Manual, Instruction I-31—Section B2, The Parents (OCD Transmittal Notice 70.2, dated August 10, 1970). This policy manual instruction is set forth in Appendix B to this part.

(b) The plan shall describe in detail the implementation of Head Start Policy Manual Instruction I-31—section B2, The Parents (Appendix B). The plan shall assure that participation of Head Start parents is voluntary and shall not be required as a condition of the child's enrollment.

§ 1304.5-3 Parent Involvement Plan content: Enhancing development of parenting skills.

The plan shall provide methods and opportunities for involving parents in:

(a) Experiences and activities which lead to enhancing the development of their skills, self-confidence, and sense of independence in fostering an environment in which their children can develop to their full potential.

(b) Experiences in child growth and development which will strengthen their role as the primary influence in their children's lives.

(c) Ways of providing educational and developmental activities for children in the home and community.

(d) Health, mental health, dental and nutrition education.

(e) Identification, and use, of family and community resources to meet the basic life support needs of the family.

(f) Identification of opportunities for continuing education which may lead towards self-enrichment and employment.

(g) Meeting with the Head Start teachers and other appropriate staff for discussion and assessment of their children's individual needs and progress.

§ 1304.5-4 Parent Involvement Plan content: Communications among program management, program staff, and parents.

(a) The plan shall provide for two-way communication between staff and parents carried out on a regular basis throughout the program year which provides information about the program and its services; program activities for the children; the policy groups; and resources within the program and the community. Communication must be designed and carried out in a way which reaches parents and staff effectively. Policy Groups, staff and parents must participate in the planning and development of the communication system used.

(b) The plan shall provide a system for the regular provision of information to members of Policy Groups. The purpose of such communication is to enable the Policy Group to make informed decisions in a timely and effective manner, to share professional expertise and generally to be provided with staff support. At a minimum, information provided will include:

(1) Timetable for planning, development, and submission of proposals;

(2) Head Start policies, guidelines, and other communications from the Office of Child Development;

(3) Financial reports and statements of funds expended in the Head Start account; and

(4) Work plans, grant applications, and personnel policies for Head Start.

(c) The entire Head Start staff shall share responsibility for providing assistance in the conduct of the above activities. In addition, Health Services, Education, and Social Services staff shall contribute their direct services to assist the Parent Involvement staff. If staff resources are not available, the necessary resources shall be sought within the community.

§ 1304.5-5 Parent Involvement Plan content: Parents, area residents, and the program.

The plan shall provide for:

(a) The establishment of effective procedures by which parents and area residents concerned will be enabled to influence the character of programs affecting their interests.

(b) Their regular participation in the implementation of such programs and,

(c) Technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources.

APPENDIX A—PROGRAM OPTIONS FOR PROJECT HEAD START

This appendix sets forth policy governing the development and implementation of variations in program design by local Head Start programs.

N-30-334-1-00 Purpose

This chapter sets forth the policy governing the development and implementation of variations in program design by local Head Start programs.

N-30-334-1-10 Scope

This policy applies to all Head Start grantees and delegate agencies that operate or propose to operate a full year program which provides a set of services to the same child or the same group of children for less than six hours a day. The policy will be applied to all applications submitted by such grantees or delegate agencies on or after April 1, 1973.

N-30-334-1-20 Policy

A. GENERAL PROVISION

Beginning in the fourth quarter of FY 1973 (April 1973), Head Start programs will be permitted and encouraged to consider several program models in addition to the standard Head Start model and select the program option best suited to the needs of the children served and the capabilities and resources of the program staff. The program options that are to be available for local selection are as follows:

The standard Head Start model.
Variations in center attendance.
Double sessions.
Home-based models.
Locally designed variations.

In principle, the Office of Child Development will support any option or design model provided a community can demonstrate in an acceptable proposal that it will result in a quality child development program at reasonable cost and meet Head Start guidelines. Any program option proposed must demonstrate that it meets each of the following conditions:

1. All policies stated in the Head Start Manual for Head Start components must be adhered to, with the exception of those points detailed in the descriptions of each of the options under Special Provisions. This policy is not to be interpreted in any way which would lessen the force of the present Head Start policy which states that, "Programs in which enrollment does not reflect the racial or ethnic composition of disadvantaged families in the area may not be funded . . ." (Head Start Manual 6108-1, page 8).

2. The design and selection of program options is to be based on an assessment of the child development needs and resources of the broader community as well as the needs of the current enrollees and their families.

3. The assignment of children to programs is to be determined by assessing such factors as age or developmental level, family situation, handicaps, health or learning problems, and previous school experience. Discussion with all parents about specific needs of their children and how best to meet those needs must be a priority in such an assessment.

4. Proposed options must be justified as consistent with good developmental practices.

5. All parents whose children participate in any option must be represented in their parent-group organizations in accordance with the revised parent involvement guidelines of the Head Start Policy Manual of August 10, 1970.

6. Program options must receive the approval of the Head Start Policy Council prior to submission to OCD.

7. There must be a specific training plan for staff and volunteers for any option chosen. It should address itself to the requirements and goals of the specific program variations being implemented.

8. The number of hours spent in the Head Start center will vary depending on the option chosen. In all cases, the center activities are to maximize opportunities for meeting the child's developmental needs.

9. The application must demonstrate the ability to conduct the program option within the limits of the current funding level unless funds are added to the program from other sources. However, some options may enable programs to serve more children within the same funding level. Careful planning and analysis will be necessary to determine the total cost associated with serving additional children. In such planning, the following areas should be considered:

a. Additional medical-dental costs;

b. Increased costs due to separate scheduling and operating practices in the area of pupil and staff transportation;

c. Additional staff for home visits and similar supportive activities;

d. Need for additional recruitment effort;

e. Increased insurance costs;

f. Additions to parent activity funds.

B. SPECIAL PROVISIONS

1. The Standard Head Start Model

Continuation of the present five-day-per-week, center-based classroom format will be optional. Communities electing to continue this format are free to do so provided that they demonstrate through a careful assessment of their needs and capabilities that continuing the present program is in the best interests of the individual children and families served. If this assessment indicates that the present format is not adequately meeting local needs, the program is to consider whether these needs could be met more effectively by one or more of the other options.

2. Variations in Center Attendance

a. Head Start programs may elect to serve some or all children on a less than five-day-per-week basis. All children who attend Head Start on a partial basis must receive the same comprehensive developmental services as children attending the 5-day session, except as otherwise indicated. Shortened hours in the classroom may be supplemented by a parent education program or another option which would assist parents in developing their role as the first and most influential educators of their own children.

In planning for less than a five-day-week classroom schedule, careful consideration must be given to the underlying reasons for the attendance variations. Program planning must specifically address the following questions:

(1) What are the developmental needs of the child? Can they be met as effectively or more effectively by less than a five-day schedule?

(2) What are the needs and desires of the family? Would adjustment factors dictate consecutive-days attendance as opposed to, say, an every-other-day schedule?

(3) How does the curriculum plan fit the age and developmental needs of the children? Does the plan take into account differing needs of children of different ages, and varying needs of the same child over time?

(4) What kind of staffing pattern is required to obtain the program objectives?

b. In all situations where the children are in the center less than five days a week, the program must specify how they will receive comprehensive services. The following examples are illustrative of what this requires.

(1) One-third to one-half of the child's daily nutritional needs must be met each day he attends the center. Parents must, on request, be provided with simple, economical weekly menus and counseling on budgeting, food preparation and sanitation, as well as on how to involve children in food-related activities in the home.

(2) Provisions for complete medical and dental services must be made for all children in accordance with Head Start policies.

(3) Staff-family interaction, as central to the Head Start concept, must be included in any variation plan. Varied scheduling is to provide staff with new and additional opportunities for such interaction.

c. Staff utilization should contribute noticeably to program quality by maximizing staff talent, potential and expertise. Staff training goals must be identified and a training plan devised which will facilitate the implementation of the option. Such training should enable the staff to incorporate curriculum modifications necessary to accommodate the shorter week and to allow for the developmental differences between three-year-olds and five-year-olds.

d. Several attendance variation models are possible in planning the delivery of Head Start services. Attendance schedules must be devised for the children in accordance with their assessed needs. Proposals must describe the methods by which children are assigned to their schedules. The following examples indicate possible scheduling variations. The list is not meant to be exhaustive.

(1) The four-day-week schedule provides four days for center-based activities plus an additional day for center staff to perform special activities, such as:

In-service training for staff, parents and volunteers.
Special experiences for children.
Home visits.
Two days in small groups in homes with parent training by the staff.

(2) Split-session schedules: Two regularly enrolled groups, each meeting two days per week, with the fifth day set aside for such things as in-service training or working with small groups of parents or children with special needs.

3. Double Sessions

Head Start programs are permitted to operate double sessions as an option. In no case shall the addition of other children result in fewer services for children currently in the program. A program shall not be required, nor shall it be permitted, to conduct double sessions solely as a cost-saving device. In addition to the policies which apply to full-year, part-day program, the following conditions must be met when the double sessions option is utilized:

a. Provisions must be made for a one-hour break between double-session classes when a single teaching staff conducts both halves of a double session. In addition, at least thirty minutes must be allotted prior to *each* session—whether or not a different teaching staff is used—to prepare for the session and set up the classroom environment, as well as to give individual attention to children entering and leaving the center. In some instances where schools serve as center sites, variations in scheduling double sessions may have to be considered.

b. The scheduling of children to attend morning or afternoon sessions must attempt to meet individual children's needs such as receptivity, necessity for naps, and other factors that might prevent full program benefit to some children.

c. Adequate time for staff consultation, planning (staff must plan for each session to meet the needs of particular children enrolled), in-service training and career development must be provided during the working schedule. In some cases, this can only be achieved by a variation in center attendance (e.g., a four-day-week for children).

d. Staff teaching both halves of a double session are not to have the primary responsibility for home visits unless some provision is made for substitute staff. In such cases, special provisions must be made for home visits.

e. Provisions must be made for an increase in supportive personnel and services in relation to the anticipated requirements of additional children and their families.

f. Provisions must be made for custodial services between sessions, including the cleaning of indoor and outdoor spaces.

g. Provisions must be made to maintain high food quality for both sessions. All children should have an opportunity to join in cooking and other food-related activities, preferably with the participation of the cook-manager.

4. Home-Based Models

Head Start grantees may elect to develop and incorporate a home-based model into their current program. Such models would focus on the parent as the primary factor in the child's development and the home as the central facility. These models may be designed along the lines of the Home Start demonstration programs initiated in fifteen communities in FY 1972 or on a model developed by the local community. The following conditions must be met by these grantees in implementing their programs:

a. Comprehensive Services

The same kinds of services which are available to children served in a center-based Head Start program will be available to children served by a home-based program. As in center-based programs, the home-based program must make every possible effort to identify, coordinate, integrate and utilize existing community resources and services (public, reduced-fee, or no-fee) in providing nutritional, health, social and psychological services for its children and their families.

(1) *Nutrition.*—In home-based programs, whenever feasible children should receive the same nutrition services as in center-based programs with priority emphasis on nutrition education aimed at helping parents learn to make the best use of existing food resources through food planning, buying and cooking. If periodic, regular or incidental group sessions for children are held, every effort should be made to prepare and serve a nutritious snack or meal. When food is not available to a family, the home-based program must make every effort to put the family in touch with whatever community organization can help supply food. In addition, parents should be informed of all available family assistance programs and should be encouraged to participate in them.

Nutrition education must recognize cultural variations in food preferences and supplement and build upon these preferences rather than attempt to replace them. Thus, food items that are a regular part of a family's diet will be a major focal point of nutrition education.

(2) *Health.*—Every effort must be made to provide health services through existing resources. Children in home-based programs are to receive the same health services as children in center-based programs.

As with the standard Head Start program, home-based programs shall provide linkages with existing health services for the entire family unit on an as-needed basis. However, Head Start funds may be used to provide health services only for the pre-school members of the family.

(3) *Psychological and Social Services.*—Home-based programs shall provide needed services through existing community resources or within the sponsoring Head Start program in accordance with existing Head Start policies.

b. Curriculum for Children

A major emphasis of the program must be to help parents enhance the total development (including cognitive, language, social, emotional and physical) of all their children.

Whatever the educational program or philosophy of a home-based program, it must have a plan or system for developing "individualized" or "personalized" education programs for its children.

In addition, programs must provide material, supplies and equipment (such as tricycles, wagons, blocks, manipulative toys and books) to foster the children's development in their homes as needed. Provision for such materials may be made through lending, cooperative or purchase systems.

Group socialization experiences must be provided on a periodic basis for all children in home-based programs. The proposal must specify what kind of developmental activities will take place in the group setting.

Furthermore, the education component—as well as all program components—must meet the needs of the locale by taking into account appropriate local, ethnic, cultural and language characteristics.

c. Parent Program

Home-based programs reflect the concept that the parent is the first and most influential "educator" and "enabler" of his or her own children. Thus, home-based programs are to place emphasis on developing and expanding the "parenting" role of Head Start parents.

Home-based programs must give both parents (or parent substitutes and other appropriate family members) an opportunity to learn about such things as various approaches to child rearing, ways to stimulate and enhance their children's total development, ways to turn everyday experiences into constructive learning experiences for children, and specific information about health, nutrition and community resources.

d. Evening and Weekend Services

It is suggested that the program make provision for evening and weekend services to families when needed.

e. Career Development

Programs must provide career development opportunities for staff. For example, training of staff should qualify for academic credit or other appropriate credentials whenever possible.

f. Service Delivery System

In their proposals, grantees must describe their system for delivering health, nutrition, psychological and other services that are not provided primarily by the in-home caregiver.

g. Staff Selection

Proposals must describe the program's system for selecting staff in accord with the responsibilities assigned by the program to the staff member. For example, the staff visiting homes must be:

(1) Fluent in the language used by the families they serve;

(2) Responsive listeners;

(3) Knowledgeable about human development, family dynamics, and needs of children;

(4) Knowledgeable about all program components;

(5) Knowledgeable about community resources.

h. Staff Development

Programs must submit a staff and volunteer recruitment plan and a training plan, including content of proposed pre- and in-service training programs, teaching method, descriptions of training staff or consultants, and provisions for continued in-service training. The career development plan must be designed to develop or increase staff member's knowledge about:

(1) Approaches to and techniques of working with parents;

(2) Other home-based or Home Start-like programs;

(3) All Head Start component areas.

i. Volunteers

As in all other Head Start programs, the home-based programs must encourage and provide opportunity for the use of volunteers.

5. Locally Designed Options

In addition to the above models, local programs may elect to design and propose other program options which they find well suited to meet the needs of individual children and the families in their communities. Proposals for local program options must adhere to the following guidelines:

a. They must be derived from an analysis of the present standard Head Start model and must represent a more effective approach to meeting the needs of children in the community.

b. They must be consistent with good developmental practices.

c. They must be consistent with Head Start performance standards and must ensure that all components of Head Start are effectively delivered, unless they are operated as an adjunct to a program which delivers the full range of Head Start services, or unless they represent a special program thrust or circumscribed effort such as:

(1) Health Start-type program or other services such as sickle cell or lead paint screening.

(2) Summer follow-on services for handicapped high risk or other children with special needs.

APPENDIX B—HEAD START POLICY MANUAL: THE PARENTS

This appendix sets forth policy governing the involvement of parents of Head Start children ". . . in the development, conduct, and overall program direction at the local level."

I-30-2 The Parents

A. INTRODUCTION

Head Start believes that the gains made by the child in Head Start must be understood and built upon by the family and the community. To achieve this goal, Head Start provides for the involvement of the child's parents and other members of the family in the experiences he receives in the child development center by giving them many opportunities for a richer appreciation of the young child's needs and how to satisfy them.

Many of the benefits of Head Start are rooted in "change". These changes must take place in the family itself, in the community, and in the attitudes of people and institutions that have an impact on both.

It is clear that the success of Head Start in bringing about substantial changes demands the fullest involvement of the parents, parental-substitutes, and families of children enrolled in its programs. This involvement begins when a Head Start program begins and should gain vigor and vitality as planning and activities go forward.

Successful parental involvement enters into every part of Head Start, influences other anti-poverty programs, helps bring about changes in institutions in the community, and works toward altering the social conditions that have formed the systems that surround the economically disadvantaged child and his family.

Project Head Start must continue to discover new ways for parents to become deeply involved in decision-making about the program and in the development of activities that they deem helpful and important in meeting their particular needs and conditions. For some parents, participation may begin on a simple level and move to more complex levels. For other parents the movement will be immediate, because of past experiences, into complex levels of sharing and giving. Every Head Start program is obligated to provide the channels through which such participation and involvement can be provided for and enriched.

Unless this happens, the goals of Head Start will not be achieved and the program itself will remain a creative experience for the preschool child in a setting that is not reinforced by needed changes in social systems into which the child will move after his Head Start experience.

This sharing in decisions for the future is one of the primary aims of parent participation and involvement in Project Head Start.

B. THE ROLE OF THE PARENTS

Every Head Start Program Must Have Effective Parent Participation. There are at least four major kinds of parent participation in local Head Start programs.

1. PARTICIPATION IN THE PROCESS OF MAKING DECISIONS ABOUT THE NATURE AND OPERATION OF THE PROGRAM.
2. PARTICIPATION IN THE CLASSROOM AS PAID EMPLOYEES, VOLUNTEERS OR OBSERVERS.
3. ACTIVITIES FOR THE PARENTS WHICH THEY HAVE HELPED TO DEVELOP.
4. WORKING WITH THEIR CHILDREN IN COOPERATION WITH THE STAFF OF THE CENTER.

Each of these is essential to an effective Head Start program both at the grantee level and the delegate agency level. Every Head Start program must hire/designate a Coordinator of Parent Activities to help bring about appropriate parent participation. This staff member may be a volunteer in smaller communities.

1. Parent Participation in the Process of Making Decisions About the Nature and Operation of the Program

Head Start Policy Groups

a. *Structure.*—The formal structure by which parents can participate in policy making and operation of the program will vary with the local administrative structure of the program.

Normally, however, the Head Start policy groups will consist of the following:

1. *Head Start Center Committee.* This committee must be set up at the center level. Where centers have several classes, it is recommended that there also be parent class committees.

2. *Head Start Policy Committee.* This committee must be set up at the delegate agency level when the program is administered in whole or in part by such agencies.

3. *Head Start Policy Council.* This Council must be set up at the grantee level.

When a grantee has delegated the entire Head Start program to one Delegate Agency, it is not necessary to have a Policy Council in addition to a Delegate Agency Policy Committee. Instead one policy group serves both the Grantee Board and the Delegate Agency Board.

b. *Composition.*—Chart A describes the composition of each of these groups.

CHART A

Organization	Composition
1. Head Start Center Committee	1. Parents whose children are enrolled in that center.
2. Head Start Policy Committee (delegate agency)	2. At least 50% parents of Head Start children presently enrolled in that delegate agency program plus representatives of the community.[1]
3. Head Start Policy Council (grantee)	3. At least 50% parents of Head Start children presently enrolled in that grantee's program plus representatives of the community.[2]

See footnotes on following page.

[1] *Representatives of the Community* (*Delegate Agency level*): A representative of neighborhood community groups (public and private) and of local neighborhood community or professional organizations, which have a concern for children of low income families and can contribute to the development of the program. The number of such representatives will vary depending on the number of organizations which should appropriately be represented. The Delegate Agency determines the composition of their committee (within the above guidelines) and methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on delegate agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee.

[2] *Representatives of the Community* (*Grantee Agency level*): A representative of major agencies (public and private) and major community civic or professional organizations which have a concern for children of low income families and can contribute to the program. The number of such representatives will vary, depending on the number of organizations which should appropriately be represented. The applicant agency determines the composition of the council (within the above guidelines) and the methods to be used in selecting representatives of the community. Parents of former Head Start children may serve as representatives of the community on grantee agency policy groups. All representatives of the community selected by the agency must be approved by elected parent members of the committee. In no case, however, should representatives of the community exceed 50% of the total committee or council.

Special Notes

1. All parents serving on policy groups must be elected by parents of Head Start children currently enrolled in the program.

2. It is strongly recommended that the community action agency board have representation from the Head Start Policy Council to assure coordination of Head Start activities with other CAA programs. Conversely, community action agency board representation on the Policy Council is also recommended.

3. It is important that the membership of policy groups be rotated to assure a regular influx of new ideas into the program. For this purpose, terms of membership must be limited to no more than three years.

4. No staff member (nor members of their families as defined in CAP Memo 23A) of the applicant or delegate agencies shall serve on the council or committee in a voting capacity. Staff members may attend the meetings of councils or committees in a consultative non-voting capacity upon request of the council or committee.

5. Every corporate board operating a Head Start program must have a Policy Committee or Council as defined by HHS. The corporate body and the Policy Committee or Council must not be one and the same.

6. Policy groups for summer programs present a special problem because of the difficulty of electing parent representatives in advance. Therefore, the policy group for one summer program must remain in office until its successors have been elected and taken office. The group from the former program should meet frequently between the end of the program and the election of new members to assure some measure of program continuity. These meetings should be for the purpose of (a) assuring appropriate follow up of the children (b) aiding the development of the upcoming summer Head Start program, (c) writing of the application, (d) hiring of the director and establishment of criteria for hiring staff and, when necessary (e) orientation of the new members. In short, the policy group from a former program must not be dissolved until a new group is elected. The expertise of those parents who have previously served should be used whenever possible.

c. *Functions.*—The following paragraphs and charts describe the minimum functions and degrees of responsibility for the various policy groups involved in administration of local Head Start programs. *Local groups may negotiate for additional functions and a greater share of responsibility if all parties agree.* All such agreements are subject to such limitations as may be called for by HHS policy. Questions about this should be referred to your HHS regional office.

(1) The Head Start Center Committee shall carry out at least the following minimum responsibilities:

(a) Assists teacher, center director, and all other persons responsible for the development and operation of every component including curriculum in the Head Start program.

(b) Works closely with classroom teachers and all other component staff to carry out the daily activities program.

(c) Plans, conducts, and participates in informal as well as formal programs and activities for center parents and staff.

(d) Participates in recruiting and screening of center employees within guidelines established by HHS, the Grantee Council and Board, and Delegate Agency Committee and Board.

(2) *The Head Start Policy Committee.* Chart B outlines the major management functions connected with local Head Start program administered by delegate agencies and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the committee shall:

(a) Serve as a link between public and private organizations, the grantee Policy Council, the Delegate Agency Board of Directors, and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agencywide activities for parents with the assistance of staff.

(d) Assist in communicating with parents and encouraging their participation in the program.

(e) Aid in recruiting volunteer services from parents, community residents and community organizations, and assist in the mobilization of community resources to meet identified needs.

(f) Administer the Parent Activity funds.

(3) *The Head Start Policy Council.* Chart C outlines the major management functions connected with the Head Start program at the grantee level, whether it be a community action or limited purpose agency, and the degree of responsibility assigned to each participating group.

In addition to those listed functions, the Council shall:

(a) Serve as a link between public and private organizations, the Delegate Agency Policy Committees, Neighborhood Councils, the Grantee Board of Directors and the community it serves.

(b) Have the opportunity to initiate suggestions and ideas for program improvements and to receive a report on action taken by the administering agency with regard to its recommendations.

(c) Plan, coordinate and organize agency-wide activities for parents with the assistance of staff.

(d) Approve the selection of Delegate Agencies.

(e) Recruit volunteer services from parents, community residents and community organizations, and mobilizes community resources to meet identified needs.

(f) Distribute Parent Activity funds to Policy Committees.

It may not be easy for Head Start directors and professional staff to share responsibility when decisions must be made. Even when they are committed to involving parents, the Head Start staff must take care to avoid dominating meetings by force of their greater training and experience in the process of decisionmaking. At these meetings, professionals may be tempted to do most of the talking. They must learn to ask parents for their ideas, and listen with attention, patience and understanding. Self-confidence and self-respect are powerful motivating forces. Activities which bring out these qualities in parents can prove invaluable in improving family life of young children from low income homes.

Members of Head Start Policy Groups whose family income falls below the "poverty line index" may receive meeting allowances or be reimbursed for travel, per diem, meal and baby sitting expenses incurred because of Policy Group meetings. The procedures necessary to secure reimbursement funds and their regulations are detailed in OEO Instruction #6803-1.

2. Participation in the Classroom as Paid Employees, Volunteers or Observers

Head Start classes must be open to parents at times reasonable and convenient to them. There are very few occasions when the presence of a limited number of parents would present any problem in operation of the program.

Having parents in the classroom has three advantages. It:

a. Gives the parents a better understanding of what the center is doing for the children and the kinds of home assistance they may require.

b. Shows the child the depth of his parents concern.

c. Gives the staff an opportunity to know the parents better and to learn from them.

There are, of course, many center activities outside the classroom (e.g., field trips, clinic visits, social occasions) in which the presence of parents is equally desirable.

Parents are one of the categories of persons who must receive preference for employment as non-professionals. Participation as volunteers may also be possible for many parents. Experience obtained as a volunteer may be helpful in qualifying for nonprofessional employment. At a minimum parents should be encouraged to observe classes several times. In order to permit fathers to observe it might be a good idea to have some parts of the program in the evening or on weekends.

Head Start Centers are encouraged to set aside space within the Center which can be used by parents for meetings and staff conferences.

3. Activities for Parents Which They Have Helped To Develop

Head Start programs must develop a plan for parent education programs which are responsive to needs expressed by the parents themselves. Other community agencies should be encouraged to assist in the planning and implementation of these programs.

Parents may also wish to work together on community problems of common concern such as health, housing, education and welfare and to sponsor activities and programs around interests expressed by the group. Policy Committees must anticipate such needs when developing program proposals and include parent activity funds to cover the cost of parent sponsored activities.

4. Working With Their Children in Their Own Home in Connection with the Staff of the Center

HHS requires that each grantee make home visits a part of its program when parents permit such visits. Teachers should visit parents of summer children a minimum of once; in full year programs there should be at least three visits, if the parents have consented to such home visits. (Education staff are now required to make no less than two home visits during a given program year in accordance with 1304.2-2(e)(4).) In those rare cases where a double shift has been approved for teachers it may be necessary to use other types of personnel to make home visits. Personnel, such as teacher aides, health aides and social workers may also make home visits with, or independently of, the teaching staff but coordinated through the parent program staff in order to eliminate uncoordinated visits.

Head Start staff should develop activities to be used at home by other family members that will reinforce and support the child's total Head Start experience.

Staff, parents and children will all benefit from home visits and activities. Grantees shall not require that parents permit home visits as a condition of the child's participation in Head Start. However, every effort must be made to explain the advantages of visits to parents.

Definitions as used on charts B and C

A. General Responsibility.—The individual or group with legal and fiscal responsibility guides and directs the carrying out of the function described through the person or group given operating responsibility.

B. Operating Responsibility.—The individual or group that is directly responsible for carrying out or performing the function, consistent with the general guidance and direction of the individual or group holding general responsibility.

C. Must Approve or Disapprove.—The individual or group (other than persons or groups holding general and operating responsibility, A and B above) must approve before the decision is finalized or action taken. The individual or group must also have been consulted in the decision making process prior to the point of seeking approval.

If they do not approve, the proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups or individuals.

D. Must be Consulted.—The individual or group must be called upon before any decision is made or approval is granted to give advice or information but not to make the decision or grant approval.

E. May be Consulted.—The individual or group may be called upon for information, advice or recommendations by those individuals or groups having general responsibility or operating responsibility.

Function	Chart B—Delegate agency				Chart C—Grantee agency			
	Board	Executive director	Head Start policy committee	Head Start director	Board	Executive director	Head Start policy council	Head Start director
I. PLANNING								
(a) Identify child development needs in the area to be served (by CAA* if not delegated)	A	B	D	D	A	B	D	D
(b) Establish goals of Head Start program and develop ways to meet them within HHS guidelines	A	C	C	B	A	C	C	B
(c) Determine delegate agencies and areas in the community in which Head Start programs will operate					A	D	C	B
(d) Determine location of centers or classes	A	D	C	B				
(e) Develop plans to use all available community resources in Head Start	A	D	C	B	A	D	C	B
(f) Establish criteria for selection of children within applicable laws and HHS guidelines					A	C	C	B
(g) Develop plan for recruitment of children	A	C	C	B				
II. GENERAL ADMINISTRATION								
(a) Determine the composition of the appropriate policy group and the method for setting it up (within HHS guidelines)	A	B	C	D	A	B	C	D
(b) Determine what services should be provided to Head Start from the CAA* central office and the neighborhood centers					A	B	C	D

Function	Chart B—Delegate agency				Chart C—Grantee agency			
	Board	Executive director	Head Start policy committee	Head Start director	Board	Executive director	Head Start policy council	Head Start director
(c) Determine what services should be provided to Head Start from delegate agency	A	B	C	D				
(d) Establish a method of hearing and resolving community complaints about the Head Start program	D	C	A	B	D	C	A	B
(e) Direct the CAA* Head Start staff in day-to-day operations					E	A	E	B
(f) Direct the delegate agency Head Start staff in day-to-day operations	E	A	E	B				
(g) Insure that standards for acquiring space, equipment, and supplies are met	A	D	D	B	A	D	D	B
III. PERSONNEL ADMINISTRATION								
(a) Determine Head Start personnel policies (including establishment of hiring and firing criteria for Head Start staff, career development plans, and employee grievance procedures)								
Grantee agency					A	C	C	B
Delegate agency	A	C	C	B				
(b) Hire and fire Head Start Director of grantee agency					A	B	C	
(c) Hire and fire Head Start staff of grantee agency					E	A	C	B
(d) Hire and fire Head Start Director of delegate agency	A	B	C					
(e) Hire and fire Head Start staff of delegate agency	E	A	C	B				
IV. GRANT APPLICATION PROCESS								
(a) Prepare request for funds and proposed work program:								
Prior to sending to CAA[1]	A	C	C	B				
Prior to sending to HHS					A	C	C	B
(b) Make major changes in budget and work program while program is in operation	A	C	C	B	A	C	C	B
(c) Provide information needed for prereview to policy council	A	D	C	B				
(d) Provide information needed for prereview to HHS					A	D	C	B
V. EVALUATION								
Conduct self-evaluation of agency's Head Start program	A	D	B	D	A	D	B	D

[1] CAA or general term "grantee".

A = General responsibility
B = Operating responsibility
C = Must approve or disapprove
D = Must be consulted
E = May be consulted

PART 1305—ELIGIBILITY REQUIREMENTS AND LIMITATIONS FOR ENROLLMENT IN HEADSTART

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AUTHORITY: 88 Stat. 2300, et seq. (42 U.S.C. 2921, et seq.)

SOURCE: 43 FR 14936, April 7, 1978, unless otherwise noted.

§ 1305.1 Purpose and scope.

This part prescribes eligibility requirements, with respect to age and family income, for enrollment and participation of children in Headstart programs.

§ 1305.2 Definitions.

(a) Terms defined in Part 1301 of this chapter have the same meaning when used in this part, unless the context indicates otherwise.

(b) As used in this part, unless the context indicates otherwise:

(1) The term "income guidelines" means the official poverty line specified by the U.S. Office of Management and Budget.

(2) The term "low-income family" means a family whose total annual income before taxes is equal to, or less than, the income guidelines. The term also includes a family that is receiving public assistance even if family income exceeds the income guidelines.

(3) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children who by reason thereof, require special education and related services.

(4) The term "enrollment year" means the period of time not to exceed twelve months, during which a Headstart program provides classroom or other program activities for children enrolled in the program.

(5) The term "family" means all persons living in the same household who are: (i) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in a Headstart program, and (ii) related to the parent(s) or guardian(s) by blood, marriage, or adoption.

(6) The term "income" means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, social security benefits, unemployment compensation, and public assistance benefits. With respect to a child in foster care, family income is the amount paid to the foster family on behalf of the child by a public or private agency.

§ 1305.3 Age eligibility of children.

Unless the Headstart agency's approved grant provides otherwise, only those children between three years of age and the age of compulsory school attendance are eligible to enroll and participate in the Headstart program.

§ 1305.4 Family income eligibility.

At least 90 percent of the children who are enrolled in each Headstart program shall be from low-income families. If applications for admission to a Headstart program are received for more children from low-income families than the Headstart program can accommodate, the children from the lowest income families shall be given preference.

§ 1305.5 Handicapped children.

No less than 10 percent of the total number of enrollment opportunities in Headstart programs in each State shall be available for handicapped children who are eligible to participate under § 1305.3.

§ 1305.6 Enrollment and re-enrollment.

(a) An application for enrollment of children in a Headstart program may be made at any time during the program year. The Headstart agency must make an eligibility determination prior to permitting a child to participate in the Headstart program.

(b) If a child has been found eligible and is participating in a Headstart program, he or she remains eligible through the enrollment year with respect to which such eligibility determination was made and the immediately succeeding enrollment year.

§ 1305.7 Income verification.

(a) The family income shall be verified by a Headstart agency before determining that a child is eligible to participate in the program.

(b) Verification shall include examination of any of the following: Individual Income Tax Form 1040, W-2 forms, pay stubs, pay envelopes, written statements from employers, or documentation showing current status and recipients of public assistance.

(c) A signed statement by an employee of the Headstart agency, identifying which of these documents was examined and stating that the child is eligible to participate in the program, shall be maintained to indicate that verification has been made.

§ 1305.8 Fees policy.

A Headstart agency shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Headstart program volunteers to pay part or all of the costs of the child's participation, the Headstart agency may accept the voluntary payments. Under no circumstances shall a Headstart agency solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

SUBCHAPTER C—THE ADMINISTRATION ON AGING, OLDER AMERICANS PROGRAMS

PART 1321—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

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SOURCE: 45 FR 21147, Mar. 31, 1980, unless otherwise noted.

Subpart A—Introduction

§ 1321.1 Basis and purpose of part.

(a) This part prescribes requirements State agencies must meet to receive grants to develop comprehensive and coordinated systems for the delivery of social and nutrition services under title III of the Older Americans Act, as amended (Act). These requirements include—

(1) Designation and responsibilities of State and area agencies;

(2) State and area plans and amendments;

(3) Services delivery;

(4) Grant awards to State agencies; and

(5) Hearing procedures for State and area agencies, applicants for planning and service area designation, and service providers.

(b) The requirements of this part are based on title III of the Act. Title III provides for formula grants to State agencies on aging under approved State plans for the development of comprehensive and coordinated systems for the delivery to older persons of social services, including multipurpose senior centers, and nutrition services. Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area. Area agencies in turn make subgrants or contracts to service providers.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended, (42 U.S.C. 3001 et. seq.)

"Area Agency" means agency designated by the State agency in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older persons.

"Administration on Aging" (AoA) means the agency established in the Office of the Secretary, Department of Health, Education and Welfare as part of the Office of Human Development Services; and which is charged with the responsibility of administering the provisions of the Act, except for title V.

"Commissioner" means the Commissioner on Aging of the Administration on Aging.

"Community focal point for service delivery" means a place or mobile unit in a community or neighborhood designated by the area agency for the collocation and coordination of services delivery to older persons.

"Comprehensive and coordinated system" means a program of interrelated social and nutrition services designed to meet the needs of older persons in a planning and service area.

"Department" means the Department of Health and Human Services.

"Fiscal Year" means the Federal Fiscal Year.

"Greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census.

"Greatest social need" means the need caused by non-economic factors which include physical and mental disabilities, language barriers, cultural or social isolation including that caused by racial or ethnic status (for example Black, Hispanic, American Indian, and Asian American) which restrict an individual's ability to perform normal daily tasks or which threaten his or her capacity to live independently.

"Human services" means social, health or welfare services.

"Indian tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by the governing body.

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native Village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act, P.L. 92-203, 85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or, is located on, or in proximity to a Federal or State reservation or rancheria.

"Multipurpose senior center" means a community or neighborhood facility for the organization and provision of a broad spectrum of services including health, social, nutritional, and educational services; and a facility for recreational and group activities for older persons.

"Nonprofit" as applied to any agency, institution or organization means an agency, institution or organization which is owned and operated by one or more corporations or associations with no part of the net earnings benefiting any private share holder or individual.

"Planning and service area" means a geographic area of a State that is designated for purposes of planning, development, delivery and overall administration of services under an area plan.

"Reservation" means any Federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Service provider" means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"State" means each of the 50 States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

"State Agency" means the single State agency designated to develop and administer the State plan and to be the focal point on aging in the State.

"Unit of general purpose local government" means a political subdivision of the State whose authority is general and not limited to only one function or combination of related functions; or an Indian tribal organization.

§ 1321.5 Applicability of other regulations.

The provisions of the following regulations apply to all activities under this part—

(a) Title 45 of the Code of Federal Regulations—

Part 74—Administration of Grants, except Subpart N;

Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

Part 81—Practice and Procedure for Hearings under Part 80 of this Title;

Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation; and

Part 90—Nondiscrimination on the Basis of Age; and

(b) Title 5 of the Code of Federal Regulations, Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

Subpart B—State Agency Designation, Organization, and Functions

§ 1321.11 Designation and functions of the State agency.

In order to be eligible to receive grants under this part, a State must designate a single State agency to—

(a) Develop and administer the State plan;

(b) Be primarily responsible for coordinating all activities in the State relating to the purposes of the Act;

(c) Serve as the effective and visible advocate for all older persons in the States; and

(d) Assist area agencies in the development of comprehensive and coordinated service delivery systems throughout the State.

§ 1321.13 Organization of the State agency.

(a) The State agency may be either—

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A multipurpose agency that administers human services programs in the State. Except as provided in paragraphs (b) and (c) of this section, a multipurpose agency must delegate all authority and responsibility under this part to a single organizational unit in the agency.

(b) The State agency may request a waiver of the requirement in paragraph (a)(2) of this section if the State agency—

(1) Submits its request as part of its State plan or as a plan amendment;

(2) Describes its methods for carrying out its functions and responsibilities under this part; and

(3) Designates a component unit of the State multipurpose agency to plan and develop all policy on programs for older persons under this part and to provide a visible focal point for advocacy, coordination, monitoring, and evaluation of programs for older persons within the State.

(c) The Commissioner approves a request for a waiver, unless the Commissioner finds that the waiver adversely affects the ability of the State agency to carry out its functions and responsibilities under this part.

§ 1321.15 State agency administration.

(a) *General rule.* The State plan must provide for the use of methods of administration which are necessary for the proper and efficient administration of the plan. The State agency must administer the plan in accordance with all applicable Federal laws and regulations, including all requirements of this part.

(b) *State agency policies.* (1) The State agency must have and follow written policies to carry out its functions under this part that are adopted in accordance with paragraph (b)(2) of this section.

(2) The State agency must—

(i) Develop proposed policies;

(ii) Publish the proposed policies in a manner that allows area agencies, providers, and older persons within the State adequate opportunity to comment on the policies.

(iii) Consider all comments in establishing final policies;

(iv) Have final policies in effect no later than one year after the effective date of these rules; and

(v) Keep its policies current, and revise them as necessary.

(c) *Functional statement.* The State agency must have on file for review a functional statement of the manner in which the State agency performs all of its responsibilities under this part.

§ 1321.17 Staffing.

(a) *Type of Staff.* The State agency, single organizational unit, or component unit where one exists, must have a qualified full-time director and an adequate number of qualified staff.

(b) *Staffing plan.* The State agency must have on file for review a staffing plan that identifies the number and types of staff assigned to carry out State agency responsibilities and functions under this part.

(c) *Preference.* Subject to merit system requirements, the State agency must give preference in hiring to persons age 60 or older.

(d) *Affirmative action.* The State agency must have affirmative action program which complies with the requirements of § 900.607 of Title 5 of the Code of Federal Regulations, Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

§ 1321.19 Confidentiality and disclosure of State agency informatilh.

(a) *Confidentiality.* (1) The State agency must have procedures to ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agency, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, 45 CFR 74.24, or for other program monitoring by authorized Federal, State, or local monitoring agencies.

(2) The State agency must ensure that lists of older persons compiled under § 1321.161 are used solely for the purpose of providing services, and only with the informed consent of each individual on the list.

(b) *Disclosure.* Subject to the confidentiality requirements in paragraph (a) of this section, the State agency must make available at reasonable times and places to all interested parties, the written policies required under § 1321.15, and other information and documents developed or received by the agency in carrying out its responsibilities under this part. The State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

Subpart C—The State Plan

§ 1321.21 What is a State plan.

A State plan is the document submitted by a State in order to receive grants from its allotments under this part. It contains provisions required by section 307 of the Act and implementing regulations and commitments that the State agency will administer or supervise the administration of activities funded under this part in accordance with all Federal requirements. A State may receive grants under this part only under an approved State plan. A State may use its grants under this part only for activities under its approved plan.

§ 1321.23 Duration and format of the State plan.

The State plan must be in effect for the three year period specified by the Commissioner. A State agency must submit a State plan or plan amendment to the Commissioner in accordance with the Commissioner's instructions concerning the format, content, time limits, transmittal forms, and procedures.

§ 1321.25 Content of the State plan.

(a) *Based on area plans.* A State plan must be based on area plans as provided in § 1321.29.

(b) *State agency function requirements.* A State plan must provide that the State agency function requirements are met for—

(1) Proper and efficient methods of administration, as provided in § 1321.15;

(2) Confidentiality and disclosure of State agency information, as provided in § 1321.19;

(3) State agency advocacy responsibilities, as provided in § 1321.41;

(4) State agency evaluation of service needs, as provided in § 1321.45(a)(8);

(5) Periodic evaluations of each area agency as provided in § 1321.45(a)(9);

(6) Development and distribution of a uniform area plan format, as provided in § 1321.45(a)(10);

(7) Coordination of legal services as provided in § 1321.45(a)(13);

(8) Commodity distribution agreements, as provided in § 1321.147;

(9) State advisory council on aging, as provided in § 1321.47;

(10) State agency hearings for area agencies, providers, and planning and service area applicants, as provided in § 1321.51;

(11) Area plan approval and disapproval, as provided in § 1321.83.

(c) *Area agency and area plan requirements.* A State plan must provide that the area agency and area plan requirements are met for area agency designation, and development and submission to the State agency of an area plan which complies with the requirements of section 306 of the Act and this part, as provided in § 1321.71, and §§ 1321.77 through 1321.81.

(d) *Service delivery requirements.* A State plan must provide that the service delivery requirements are met for—

(1) A long-term care ombudsman program, as provided in § 1321.43;

(2) Restricting direct provision of services, as provided in § 1321.103;

(3) All service providers concerning licensure, safety, training, outreach, coordination, preference to those with greatest economic or social need, contributions, maintenance of non-Federal support for services, and advisory role for older persons, as provided in §§ 1321.105 through 1321.113.

(4) Multipurpose senior center activities, as provided in §§ 132.121 through 1321.137;

(5) Nutrition services, as provided in §§ 1321.141 through 1321.147;

(6) Legal services, as provided in § 1321.151; and

(7) Information and referral, as provided in § 1321.161.

(e) *Fiscal requirements.* A State plan must provide that the following fiscal requirements are met for—

(1) Expenditures in each Federal fiscal year in rural areas of 105 percent of FY 1978 expenditures, as provided in § 1321.185; and

(2) Minimum expenditures for the long term care ombudsman program, as provided in § 1321.189.

(f) *Directory of community focal points.* A State plan must assure that the State agency keeps a directory of focal points in the State.

(g) *Information requirements.* The State plan must specify—

(1) Program objectives to implement the service delivery requirements of paragraphs (d)(1), and (d)(4) through (d)(7) of this section, which are consistent with the requirements of this part, objectives established by the Commissioner, and objectives established in area plans in the State;

(2) Documentation of the designation of the State agency;

(3) A resource allocation plan indicating the proposed use of all funds for services to older persons directly administered by the State agency;

(4) Proposed methods for giving preference to those with greatest economic or social need in the provision of services under the plan. These methods—

(i) Must include, but are not limited to—

(A) Consideration of older persons with greatest economic need in dividing the State into planning and service areas, as provided in § 1321.53; and

(B) Consideration of older persons with greatest economic or social need in developing the intrastate funding formula, as provided in § 1321.49.

(ii) May not include use of a means test. A means test is the use of an older person's income or resources to deny or limit that person's receipt of services under this part;

(5) All planning and service areas and all area agencies in the State.

§ 1321.27 Amendments to the State plan.

The State agency must amend its plan if—

(a) A new or amended Federal statute or regulation requires a new plan provision, or conflicts with any existing plan provision;

(b) A U.S. Supreme Court decision changes the interpretation of a statute or regulation;

(c) The State proposes to change the designation of the State agency, single organizational unit or component unit;

(d) The State agency proposes to add, substantially modify, or delete any Statewide program objective(s);

(e) The State agency proposes to change the designation of any planning and service area; or

(f) The Commissioner requires States to submit annual amendments.

§ 1321.29 Development and review of the State plan and plan amendments.

(a) *State plan based on area plans.* The State agency must periodically consult with all the area agencies in the State to—

(1) Assess the needs of older persons in the State;

(2) Assist in establishing statewide priorities;

(3) Review procedures with regard to the development and implementation of the State plan; and

(4) Ensure that the objectives established in State and area plans are consistent.

(b) *Public Hearings.* The State agency must—

(1) Hold public hearings on the State plan and on all amendments to the State plan identified in § 1321.27;

(2) Give adequate notice to older persons, public officials and other interested parties of the times, dates and locations of the public hearings; and

(3) Hold public hearings throughout the State at times and locations which permit older persons, public officials, and other interested parties reasonable opportunity to participate.

(c) *Review by State Advisory Council.* The State agency must submit the State plan or amendments for review and comment, to the State advisory council.

(d) *Review by the Governor.* The State agency must submit the State plan or plan amendments to the Governor for review and signature.

§ 1321.31 Submission of the State plan and plan amendments to the Commissioner for approval.

The State agency must submit the State plan or plan amendments signed by the Governor to the Commissioner at least 60 calendar days before the proposed effective date of the plan, or plan amendments. The Commissioner does not consider a State plan or amendment for approval unless it is signed by the Governor.

§ 1321.33 Approval or disapproval of a State plan and plan amendments.

(a) The Commissioner approves any State plan or amendment that fully meets all Federal requirements including the requirements of this part.

(b) If the Commissioner finds that any required provision of the plan or amendment is unapprovable, the Commissioner follows the procedures in Subpart J to disapprove the plan and withhold further payments to the State.

§ 1321.35 How a State agency is notified.

(a) *Approval.* When the Commissioner approves a State plan or amendment, the Commissioner notifies the Governor and the State agency in writing.

(b) *Disapproval.* When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor and the State agency in writing. The notice gives the reasons for proposed disapproval and informs the agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart J.

§ 1321.37 Effective dates and expenditures under an approved State plan or amendment.

(a) *Effective date.* An approved State plan or amendment become effective on the date designated by the Commissioner.

(b) *Expenditure.* An agency may not make expenditures under a new plan or amendment until it is approved.

Subpart D—State Agency Responsibilities

§ 1321.41 Advocacy responsibilities: general.

The State agency must—

(a) Review and comment on all State plans, budgets, and policies which affect older persons;

(b) Conduct public hearings on the needs of older persons;

(c) Coordinate statewide planning and development of activities related to the purposes of the Act and assure that each area agency has effective procedures to coordinate programs related to the purposes of the Act within the planning and service area;

(d) Represent the interests of older persons before legislative, executive and regulatory bodies in the State;

(e) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons;

(f) Establish and operate the long-term care ombudsman program required by § 1321.43; and

(g) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

§ 1321.43 Long-term care ombudsman program.

(a) *General rule.* The State agency must establish and operate a statewide long-term care ombudsman program that meets the requirements of paragraphs (c) through (f) of this section. The State agency may operate the ombudsman program directly, or by contract or other arrangement, with any public agency or private nonprofit organization, except one that is—

(1) Responsible for licensing or certifying long-term care facilities or other residential facilities for older persons, or

(2) An association, or an affiliate or agent of an association, of long-term care facilities for older persons.

(b) *Definition.* For purposes of this section, "long-term care facility" means any—

(1) Skilled nursing facility as defined in Section 1861(j) of the Social Security Act;

(2) Intermediate care facility as defined in Section 1905(c) of the Social Security Act;

(3) Nursing home as defined in Section 1908(e) of the Social Security Act; and

(4) Other similar adult care home as defined by the State agency in the State plan and approved by the Commissioner.

(c) *Appointing an ombudsman.* The State agency must appoint an individual to serve as the State long-term care ombudsman and delegate to the ombudsman the responsibility to—

(1) Investigate and resolve complaints made by or for older persons in

long-term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights. "Administrative action" means any action or decision made by an owner, employee or agent of a long-term care facility, or by a government agency, which affects the provision of service to residents covered by this section;

(2) Monitor the development and implementation of Federal, State and local laws, regulations and policies that relate to long-term care facilities in the State;

(3) Provide information to public agencies about the problems of older persons in long-term care facilities;

(4) Train volunteers and assist in the development of citizen organizations to participate in the ombudsman program; and

(5) Carry out other activities consistent with the requirements of this section which the Commissioner determines appropriate.

(d) *Access requirements.* The State agency must establish procedures to ensure that—

(1) The ombudsman program is given appropriate access to long-term care facilities and appropriate private access to residents; and

(2) The ombudsman and the ombudsman's designees are given appropriate access to residents' personal and medical records.

(e) *Confidentiality and disclosure requirements.* The State agency must establish procedures to protect the confidentiality of residents' records and files. These procedures must meet the following requirements:

(1) No information or records maintained by the ombudsman program are disclosed unless the ombudsman authorizes the disclosure; and

(2) The ombudsman does not disclose the identity of any complainant or resident unless—

(i) The complainant or resident, or a legal representative of either, consents in writing to the disclosure and specifies to whom the identity may be disclosed; or

(ii) A court orders the disclosure.

(f) *Reporting system.* The State agency must establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The State agency must submit this information to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner in the manner prescribed by the Commissioner.

§ 1321.45 Service delivery systems responsibilities: general.

(a) The State agency must—

(1) Develop and administer the State plan;

(2) Divide the State into planning and service areas, as provided in § 1321.53;

(3) Designate area agencies in those planning and service areas for which the State decides to have an area plan developed;

(4) Approve and monitor the administration of area plans;

(5) Provide adequate and effective opportunities for older persons to express their views to the State agency on policy development and program implementation under the plan;

(6) Give preference to older persons with the greatest economic or social need in the delivery of services under the State plan;

(7) Develop an intrastate funding formula, as provided in § 1321.49;

(8) Evaluate the need for social and nutritional services in the State, and determine the extent to which other public and private programs meet the needs;

(9) Conduct periodic evaluation of activities and projects carried out under the State plan, including at least annual on site performance evaluations of each area agency;

(10) Develop and distribute a uniform plan format and guidance for area plans that meets the requirements specified in Subpart F;

(11) Provide technical assistance to area agencies;

(12) Establish an advisory council on aging, as provided in § 1321.47;

(13) Coordinate legal services for older persons in the State, give technical assistance, advice, and training in

the provision of legal services to older persons; and make reasonable efforts to maintain existing levels of those services;

(14) Enter into an agreement with the U.S.D.A. State Distributing Agency, as provided in § 1321.147;

(15) Provide administrative and hearing procedures, as required under §§ 1321.15 and 1321.51;

(16) Ensure that all older persons in the State have reasonably convenient access to information and referral services; and

(17) Maintain a directory of community focal points in the State.

(b) The State agency may—

(1) Conduct training and development programs for personnel involved in implementing this part; and

(2) Enter into contracts to carry out demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services provided under this part.

§ 1321.47 State advisory council on aging.

(a) *Functions of the council.* The State agency must establish a State advisory council in accordance with paragraphs (b) through (e) of this section to advise and help the State agency to—

(1) Develop and implement the State plan;

(2) Conduct public hearings;

(3) Represent the interests of older persons; and

(4) Review and comment on other State plans, budgets and policies which affect older persons.

(b) *Composition of the council.* More than 50 percent of the persons appointed to the State advisory council must be at least 60 years old and include—(1) Persons with greatest economic or social need; and (2) Participants under this part.

(c) *Frequency of meetings.* The State advisory council must meet at least quarterly.

(d) *Support.* The State agency must provide staff support and assistance to the State advisory council.

(e) *By-laws.* The State agency must develop and make public by-laws which specify the role and functions of the advisory council, number of members, procedures for selection of members, term of membership, and frequency of meetings.

§ 1321.49 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, must develop and use an intrastate funding formula in accordance with paragraphs (b) through (e) of this section, for the allocation of funds to area agencies under this part.

(b) The formula must—

(1) Include an identical base subgrant to each area agency in the State;

(2) Allocate to rural areas in the State at least 105 percent of the amount spent under Titles III, V, and VII of the Act for services in rural areas in the 1978 Federal fiscal year, as provided in § 1321.185;

(3) Reflect the proportion of persons age 60 and over among the planning and service areas in the State; and

(4) Reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need.

(c) The State agency must publish the formula for review and comment.

(d) The State agency must submit its formula and any proposed revisions to the Commissioner for review and comment as an attachment to the State plan. The State agency must submit with the formula a summary of comments received on it.

(e) The State agency must review and update its formula at least every three years.

§ 1321.51 State agency hearings.

(a) The State agency must provide an opportunity for a hearing to—

(1) Any area agency when the State agency proposes to—

(i) Disapprove the area plan or plan amendment submitted by the area agency as specified in § 1321.83(b); or

(ii) Withdraw the area agency's designation as provided in § 1321.85;

(2) Any applicant for designation as a planning and service area under § 1321.53 whose application is denied;

(3) Any nutrition project specified in § 1321.143(b)(1) which the area agency proposes to defund; and

(4) Any service provider whose application to provide services under an

area plan is denied or whose subgrant or contract is terminated or not renewed except as provided in 45 CFR Part 74, Subpart M.

(b) If an agency or organization wants a hearing, it must file a written request for a hearing with the State agency within 30 days following its receipt of the notice of the adverse action.

(c) When it receives a request for a hearing, the State agency must notify the agency or organization of the date, time, and location of the hearing. The State agency must complete the hearing within 120 days of the date the request for hearing was received by the State agency. The State agency must issue the hearing decision within 60 days after the hearing is completed.

(d) At a minimum, the hearing procedures for agencies and organizations identified in paragraphs (a)(1) through (a)(3) of this section must include—

(1) Timely written notice of the reasons for the agency action that is being appealed and the evidence on which the action was based;

(2) An opportunity to review any pertinent evidence on which the agency action was based;

(3) An opportunity to appear in person before an impartial decision maker to refute the basis for the decision;

(4) An opportunity to be represented by counsel or other representative;

(5) An opportunity to present witnesses and documentary evidence;

(6) An opportunity to cross-examine witnesses; and

(7) A written decision by an impartial decision maker which sets forth the reasons for the decision and the evidence on which the decision is based.

(e) The State agency must establish appropriate hearing procedures for agencies and organizations identified in paragraph (a)(4) of this section.

(f) The State agency may terminate formal hearing procedures at any point if the State agency and agency or organization that requested the hearing negotiate a written agreement that resolves the issue(s) which led to the hearing.

§ 1321.53 Designation of planning and service areas.

(a) *General rule.* The State agency must divide the State into planning and service areas.

(b) *Application for designation.* The State agency must provide an opportunity to apply to be designated as a planning and service area to any unit of general purpose local government, region metropolitan area, or Indian reservation(s). The application on behalf of an Indian reservation(s) must be made by the governing tribal organization(s).

(c) *Factors to be used in designation.* In dividing the State into planning and service areas, the State agency must consider—

(1) The distribution in the State of persons age 60 and older including those with the greatest economic need;

(2) The views of public officials of the units of general purpose local governments;

(3) The incidence of need for services provided under this part and the resources available to meet these needs; and

(4) The boundaries of units of general purpose local government, regional planning areas, Indian reservations, existing economic development districts and areas within the State established for planning and administering human services, including the areawide comprehensive planning and development districts or regions established pursuant to Office of Management and Budget Circular A-95, Part IV. The State agency is encouraged to include all portions of an economic development district or an Indian reservation within a single planning and service area.

(d) *Decision.* The State agency must document the basis for its designation of each planning and service area.

§ 1321.55 Appeal to the Commissioner.

(a) *General rule.* Any applicant for designation as a planning and service area under § 1321.53(b) whose application is denied by the State agency may appeal the denial to the Commissioner under the procedures specified in paragraphs (b) through (d) of this section.

(b) *State agency hearing.* Before filing an appeal with the Commissioner, the applicant must first request and receive a hearing from the State agency following procedures specified in § 1321.51.

(c) *Time for appeal to Commissioner.* If the applicant decides to appeal the State agency hearing decision, the applicant must file a written appeal with the Commissioner within 30 days following receipt of the hearing decision.

(d) *Review by the Commissioner.* When the Commissioner receives an appeal, the Commissioner requests the State agency to submit—

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(e) *Procedures for appeal.* The procedures for the appeal consist of—

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(f) *Decision by the Commissioner.*

(1) The Commissioner issues a written decision.

(2) The Commissioner may—

(i) Deny the appeal and uphold the decision of the State agency;

(ii) Uphold the appeal and require the State agency to designate the applicant as a planning and service area; or

(iii) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(3) The Commissioner upholds the decision of the State agency if it followed the procedures specified in §§ 1321.51 and 1321.53, and the hearing decision is not manifestly inconsistent with the purposes of this part.

§ 1321.57 Interstate planning and service area.

(a) The Governor of each State in which a proposed planning and service area crosses State boundaries may request the permission of the Commissioner to designate an interstate planning and service area.

(b) Before requesting this permission, the Governor of each State must execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions agreed upon by each State governing formation, administration, and dissolution of the interstate planning and service area.

(c) Each Governor who requests this permission must submit the request together with a copy of the agreement as part of the State plan or as an amendment to the State plan.

(d) If the Commissioner approves the request for designation of an interstate planning and service area, the Commissioner reduces the allotment(s) of the State(s) without lead responsibility for administering programs within the area in proportion to the number of individuals age 60 and older in the State(s) portion of the area, and adds the amount(s) to the allotment of the State with lead responsibility.

§ 1321.59 Single State planning and service area.

(a) *Application for designation.* A State may apply to the Commissioner for approval to designate the entire State as a single planning and service area.

(b) *Criteria for approval.* The Commissioner approves the designation of the State as a single planning and service area if—

(1) No jurisdiction successfully applied for designation as a planning and service area under the procedures specified in § § 1321.51 through 1321.55; and

(2) The State agency demonstrates that—

(i) The State is not already divided for purposes of planning and administering human services; or

(ii) The State is so small or rural that the purposes of this part would be frustrated if the State were divided into planning and service areas; and

(iii) The State agency has the capacity to carry out the responsibilities of the area agency specified in Subparts E, F, and G for the entire State.

(c) *Approval by the Commissioner.* If the Commissioner approves the application—

(1) The Commissioner notifies the State agency to develop a Single State Planning and Service Area Plan which meets the requirements of Subparts C and F;

(2) The State agency must meet all the State and area agency function requirements specified in Subparts B, D, E, and G; and

(3) The approval does not extend beyond three years.

(d) *Denial by the Commissioner.* If the Commissioner denies the application, the Commissioner notifies the State to follow the procedures specified in § 1321.53 to divide the State into planning and service areas.

Subpart E—Area Agency Designation, Organization, Functions

§ 1321.61 Designation and functions of area agencies.

(a) *General rule.* The State agency must designate an area agency in each planning and service area in which the State agency decides to allocate funds under this part.

(b) *Procedures before designation.* Before designating an area agency, the State agency must—

(1) Consider the views of the unit(s) of general purpose local government within the planning and service area; and

(2) Conduct an on-site assessment to determine whether the agency which is being considered for designation as an area agency has the capacity to perform all of the functions of an area agency specified in this part.

(c) *Functions of area agencies.* The area agency must—

(1) Develop and administer the area plan for a comprehensive and coordinated system of services; and

(2) Serve as the advocate and focal point for older persons in the planning and service area.

§ 1321.63 Types of agencies that may be an area agency.

(a) The State agency may designate as an area agency any one of the following types of agencies that has the authority and the capacity to perform the functions of an area agency:

(1) An established office on aging which operates within the planning and service area;

(2) Any office or agency of a unit of general purpose local government that is proposed by the chief elected official of the unit;

(3) Any office or agency proposed by the chief elected officials of a combination of units of general purpose local government; or

(4) Any other public or private nonprofit agency, except any regional or local agency of the State.

(b) In designating an area agency, the State agency must give preference to—

(1) An established office on aging; or

(2) Any Indian tribal organizations, including consortia, in any planning and service area whose jurisdiction is essentially the same as that of one or more Indian reservations.

§ 1321.65 Organization of the area agency.

(a) An area agency may be either—

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A multipurpose agency with the authority and capacity to administer human services in the area. A multipurpose agency must delegate all its authority and responsibility under this part to a single organizational unit in the agency unless the area agency receives a waiver of this requirement from the State agency under paragraphs (b) and (c) of this section.

(b) The area agency may request a waiver of the requirement in paragraph (a)(2) of this section if the area agency—

(1) Submits its request as part of its area plan or as a plan amendment;

(2) Describes its methods for carrying out its functions and responsibility under this part; and

(3) Designates a component unit of the area agency to plan and develop all policy on programs for older persons under this part, and to provide a visible focal point for advocacy, coordination, monitoring and evaluation of programs for older persons in the planning and service area.

(c) The State agency may approve a request for waiver if it finds that the area agency can effectively carry out its functions and responsibilities under this part without a single organizational unit.

§ 1321.67 Area agency procedures.

(a) The area agency must have written procedures for carrying out its functions under this part that meet procedural requirements specified by the State agency.

(b) If the area agency is not an areawide A-95 clearinghouse, the area agency must seek to enter into a memorandum of agreement with the A-95 clearinghouse. The memorandum must cover the means by which the area agency and A-95 clearinghouse propose to coordinate their planning activities. The agreement must, at a minimum, include the matters contained in OMB Circular A-95, Part IV.

§ 1321.69 Staffing.

(a) *Type of Staff.* The area agency, single organizational unit, or component unit where one exists, must have a qualified full-time director and an adequate number of qualified staff.

(b) *Staffing plan.* The area agency must have on file for review a staffing plan that identifies the number and types of staff assigned to carry out area agency responsibilities and functions under this part.

(c) *Preference.* Subject to merit system requirements, the area agency must give preference in hiring to persons 60 or older.

(d) *Affirmative action.* Any area agency which is a public agency must have an affirmative action program which complies with the requirements of § 900.607 of Title 5 of the Code of Federal Regulations, Part 900, Subpart E, Standards for a Merit System of Personnel Administration.

Subpart F—The Area Plan

§ 1321.71 What is an area plan.

An area plan is the document submitted by an area agency to the State agency in order to receive subgrants or contracts from the State agency's grant under this part. The area plan contains provisions required by the Act and this part and commitments that the area agency will administer activities funded under this part in accordance with all Federal requirements. The area plan also contains a detailed statement of the manner in which the area agency is developing a comprehensive and coordinated system throughout the planning and service area for all services authorized under this part. An area agency may receive subgrants or contracts under this part only under an approved area plan. An area agency may use its subgrants or contracts under this part only for activities under its approved plan.

§ 1321.73 Duration and format of the area plan.

(a) The area plan must be for the three year period specified by the State agency.

(b) The area agency must submit an area plan or amendment to the State agency in accordance with the uniform area plan format and other instructions issued by the State agency.

§ 1321.75 Comprehensive and coordinated service delivery system.

(a) The area plan must provide for the development of a comprehensive and coordinated service delivery system for social and nutrition services needed by older persons in the planning and service area in which the area agency enters into cooperative arrangements with other service planners and providers to—

(1) Facilitate access to and utilization of all existing services; and

(2) Develop social and nutrition services effectively and efficiently to meet the needs of older persons.

(b) Service components of a comprehensive and coordinated service delivery system that may be funded under this part are—

(1) Services which facilitate access, such as transportation, outreach, information and referral, escort, individual needs assessment and service management;

(2) Services provided in the community, such as congregate meals, continuing education, health and health screening, legal services, program development and coordination activities, advocacy, information and referral, individual needs assessment and service management, casework, counseling and assistance (concerning taxes, financial problems, welfare, the use of facilities and services, pre-retirement or second career), day care, protective services, health screening, services designed for the unique needs of the disabled, emergency services, including disaster relief services, residential repair and renovation, physical fitness, and recreation services, services in helping to obtain adequate housing. Alteration, renovation, acquisition and, where permitted according to the provisions of § 1321.131, construction of facilities to be used as multipurpose senior centers, are community services for purposes of this part;

(3) Services provided in the home, such as home health, homemaker services, home health aide services, legal services, preinstitutional evaluation, casework, counseling, chore maintenance, visiting, shopping, readers, letter writing, and telephone reassurance, home delivered meals and nutrition education; and

(4) Services provided to residents of care providing facilities, such as casework, counseling, placement and relocation assistance, group services, legal services, complaint and grievance resolution and visiting. Care providing facilities include long term care facilities as defined in § 1321.43(b), emergency shelters, and other congregate living arrangements.

§ 1321.77 Content of the area plan.

(a) *Comprehensive and coordinated system.* An area plan must provide for the comprehensive and coordinated service delivery system specified in § 1321.75.

(b) *Area agency function requirements.* An area plan must provide that the area agency function requirements are met for—

(1) Monitoring, evaluating, and commenting on policies and programs affecting the older persons, as provided in § 1321.91(a);

(2) Arrangements with children's day care organizations, as provided in § 1321.93(k);

(3) Arrangements with educational institutions, as provided in § 1321.93(l);

(4) Assessment of need for services in the planning and service area, and evaluation of effectiveness of services being provided, as provided in § 1321.93(b);

(5) Awarding subgrants and entering into contracts for the provision of services under the plan, as provided in § 1321.93(c);

(6) Technical assistance and evaluation of all providers, as provided in § 1321.93(d);

(7) Considering the views of older persons, as provided in § 1321.93(i);

(8) Outreach efforts, as provided in § 1321.93(j);

(9) Designation of community focal points, as provided in § 1321.95; and

(10) Coordination with other Federal programs serving older persons, as provided in § 1321.99.

(c) *Service delivery requirements.* An area plan must provide that the service delivery requirements are met for—

(1) Giving preference to older persons with greatest economic or social need, as provided in § 1321.93(g);

(2) Restricting direct provision of services, as provided in § 1321.103;

(3) All service providers concerning licensure, safety, training, outreach, coordination, preference to those with greatest economic or social need, contributions, maintenance of non-Federal support for services, and advisory role for older persons, as provided in §§ 1321.105 through 1321.113;

(4) Multipurpose senior centers activities, as provided in §§ 1321.121 through 1321.137;

(5) Nutrition services, as provided in §§ 1321.141 through 1321.147;

(6) Legal services, as provided in § 1321.151;

(7) Information and referral services, as provided in § 1321.161; and

(8) Transportation services, as provided in § 1321.171.

(d) *Fiscal requirements.* An area plan must provide that the requirement of § 1321.187 is met for expenditure of 50 percent of its social services allotment for priority sevices.

(e) *Informational requirements.* The area plan must specify—

(1) Program objectives to implement the service delivery requirements specified in paragraphs (c)(1), and (c)(4) through (c)(7) of this section, that are consistent with the requirements of this part and objectives established by the State agency;

(2) A resource allocation plan indicating the proposed use of all funds for programs for older persons directly administered by the area agency;

(3) An identification of designated community focal points;

(4) Methods the area agency uses to set services priorities under the plan, particularly those services specified in § 1321.187(a); and

(5) Proposed methods for giving preference to those with greatest economic or social need in the provision of services under the plan. These methods—

(i) Must include, but are not limited to, consideration of older persons with greatest economic or social need in the designation of community focal points, as provided in § 1321.95; and

(ii) May not include use of a means test. A means test is the use of an older person's income or resources to deny or limit that person's receipt of services under this part.

§ 1321.79 Amendments to the area plan.

The area agency must amend the plan if—

(a) A new or amended State or Federal statute or regulation requires a new provision, or conflicts with any existing plan provision;

(b) A U.S. Supreme Court decision changes the interpretation of a statute or regulation;

(c) The area agency proposes to change the designation of the single organizational unit or component unit;

(d) The area agency proposes to add, substantially modify, or delete any area plan objective(s); or

(e) The State agency requires further annual amendments.

§ 1321.81 Review of the area plan and plan amendments.

(a) *Public hearing.* The area agency must—

(1) Hold at least one public hearing on the area plan and on all amendments to the area plan specified in § 1321.79;

(2) Give adequate notice to older persons, public officials, and other interested parties of the times, dates, and locations of the public hearing(s); and

(3) Hold the public hearing(s) at a time and location which permit older persons, public officials, and other interested parties reasonable opportunity to participate.

(b) *Review by advisory council and clearinghouses.* The area agency must submit the area plan and amendments for review and comment, to the advisory council, and to the State and areawide A-95 clearinghouses in accordance with OMB Circular A-95, Part I.

(c) *State agency approval.* The area agency must submit the area plan or amendments to the State agency for approval, following procedures specified by the State agency.

§ 1321.83 Approval or disapproval of an area plan and plan amendments.

(a) The State agency must approve an area plan or amendment which meets the requirements of this part and any other requirements established by the State agency under its authority under this part.

(b) If the State agency finds that any provision of the area plan or plan amendment is not approvable, the State agency must follow the procedures in § 1321.51 to disapprove the plan or plan amendment.

§ 1321.85 Withdrawal of area agency designation and continuity of services.

(a) The State agency withdraws the area agency designation whenever the State agency, after reasonable notice and opportunity for a hearing, as provided in § 1321.51, finds that—

(1) The area agency does not meet the requirements of this part;

(2) The plan or plan amendment is not approved; or

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of this part.

(b) If the State agency withdraws and area agency's designation under paragraph (a) of this section, it must—

(1) Notify the Commissioner in writing of its action;

(2) Provide a plan for the continuity of services in the affected planning and service area; and

(3) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period up to 180 days after its final decision to withdraw designation of an area agency—

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend for a period of up to an additional 180 days the limit in paragraph (c) of this section if the State agency—

(1) Requests an extension; and

(2) Demonstrates to the satisfaction of the Commissioner a need for the extension.

Subpart G—Area Agency Responsibilities

§ 1321.91 Advocacy responsibilities of the area agency.

The area agency must—

(a) Monitor, evaluate, and comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(b) Conduct public hearings on the needs of older persons;

(c) Represent the interests of older persons to public officials, public and private agencies or organizations;

(d) Carry out activities in support of the State administered long-term care ombudsman program; and

(e) Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons.

§ 1321.93 Area agency general planning and management responsibilities.

The area agency must—

(a) Develop and administer an area plan for a comprehensive and coordinated service delivery system in the planning and service area, in compliance with all applicable laws and regulations, including all requirements of this part;

(b) Assess the kinds and levels of services needed by older persons in the planning and service area, and the effectiveness of the use of resources in meeting these needs;

(c) Except as provided in § 1321.103, award subgrants or enter into contracts to provide all services under the plan;

(d) Provide technical assistance, monitor, and periodically evaluate the performance of all service providers under the plan;

(e) Coordinate the administration of its plan with the Federal programs specified in §1321.99, and with other Federal, State and local resources in order to develop the comprehensive and coordinated service system required by § 1321.75;

(f) Establish an advisory council as required by § 1321.97;

(g) Give preference in the delivery of services under the area plan to older persons with the greatest economic or social need;

(h) Assure that older persons in the planning and service area have reasonably convenient access to information and referral services;

(i) Provide adequate and effective opportunities for older persons to express their views to the area agency on policy development and program implementation under the plan;

(j) Have outreach efforts to identify older persons and inform them of the availability of services under the plan. These outreach efforts should have special emphasis on the rural elderly, and on those with greatest economic or social needs. With respect to nutrition services, have outreach efforts that ensure that the maximum number of eligible persons have an opportunity to receive services;

(k) If possible, have arrangements with children's day care organizations so that older persons can volunteer to help provide the day care;

(l) If possible, have arrangements with local educational agencies, institutions of higher education, and nonprofit private organizations, to use the services provided older individuals under the community schools program of the Elementary and Secondary Education Act of 1965;

(m) Develop and publish the methods that the agency uses to establish priorities for services, particularly those specified in § 1321.187;

(n) Establish procedures governing outreach, training and coordination activities of service providers; and

(o) Attempt to involve the private bar in legal services activities as provided in § 1321.151, including groups within the private bar that furnish legal services on a pro bono and reduced fee basis;

(p) Designate, if feasible, community focal points as provided in § 1321.95.

§ 1321.95 Designation of community focal points for service delivery.

(a) *General rule.* In order to facilitate ready access to services provided under the area plan, and encourage the maximum collocation and coordination of services for older persons, the area agency must designate, if feasible, a focal point for comprehensive services delivery in each community.

(b) *Procedures for designating community focal points for service delivery.* The area agency must—

(1) Specify in the area plan the communities in which it proposes to designate and develop focal points. In making the determination, the area agency must consider—

(i) Communities with the greatest incidence of older persons with the greatest economic or social need;

(ii) The delivery pattern of services funded under this part and funded from other sources;

(iii) The location of multipurpose senior centers and congregate nutrition sites;

(iv) The geographic boundaries of communities and natural neighborhoods; and

(v) The location of facilities suitable for designation.

(2) Designate a facility to be a community focal point in each community selected under paragraph (b)(1) of this section. In making this designation, the area agency must—

(i) Give special consideration to multipurpose senior centers; and

(ii) Assure that the facility currently or potentially can accommodate the collocation of services.

(c) *Developing collocation of services.* The area agency must—

(1) Establish guidelines for operating schedules at the focal point which are convenient for older persons in the community;

(2) Assure the community focal point has direct access to existing information and referral and emergency services programs; and

(3) Encourage service providers to collocate their services at the community focal point and coordinate with other services provided at the focal point.

§ 1321.97 Area agency advisory council.

(a) *Functions of council.* The area agency must establish an advisory council in accordance with paragraphs (b) through (e) of this section. The council must advise the agency to—

(1) Develop and administer the area plan;

(2) Conduct public hearings;

(3) Represent the interests of older persons; and

(4) Review and comment on all community policies, programs and actions which affect older persons.

(b) *Composition of the council.* The advisory council must be made up of—

(1) More than 50 percent older persons and include—

(i) Older persons with greatest economic or social need; and

(ii) Participants under this part;

(2) Representatives of older persons;

(3) Local elected officials; and

(4) The general public.

(c) *Frequency of meetings.* The area agency advisory council must meet at least quarterly.

(d) *Support.* The area agency must provide staff and assistance to the advisory council.

(e) *By-laws.* The area agency must develop and make public by-laws which specify the role and functions of the advisory council, number of members, procedures for selection of members, term of membership, and the frequency of meetings.

§ 1321.99 Coordination with other programs.

To carry out its responsibility to develop a comprehensive and coordinated service delivery system, the area agency must establish effective and efficient procedures to coordinate with—

(a) Health systems agencies designated under Title XV of the Public Health Services Act; and

(b) Agencies administering the following programs—

(1) The Comprehensive Employment and Training Act of 1973;

(2) Title II of the Domestic Volunteer Act of 1973;

(3) Titles II, XVI, XVIII, XIX, and XX of the Social Security Act;

(4) Sections 231 and 232 of the National Housing Act;

(5) The United States Housing Act of 1937;

(6) Section 202 of the Housing Act of 1959;

(7) Title I of the Housing and Community Development Act of 1974;

(8) Section 222(a)(8) of the Economic Opportunity Act of 1964;

(9) The community schools program under the Elementary and Secondary Education Act of 1964; and

(10) Sections 3, 5, 9 and 16 of the Urban Mass Transportation Act of 1964.

Subpart H—Service Requirements

GENERAL REQUIREMENTS APPLICABLE TO ALL SERVICES

§ 1321.101 State agency approval of area agency subgrants or contracts.

(a) The State agency may not require the area agency to submit to it for prior review or approval any proposed subgrants or contracts with public or private nonprofit agencies or organizations.

(b) The area agency must submit to the State agency for prior approval any proposed contracts with profit making organizations to provide services under the area plan. The State agency approves the contract only if the area agency demonstrates that the profit making organization can provide services in a manner clearly superior to other available public or private nonprofit service providers.

§ 1321.103 Direct provision of services by State and area agencies.

(a) *General rule.* A State or area agency must use subgrants or contracts with service providers to provide all services under this part unless the State agency decides that direct provision of a service by the State or area agency using its own employees is necessary to assure an adequate supply of the services. A State agency may only provide services directly when the State has been designated as a single planning and service area, as provided in § 1321.59.

(b) *Effectively and efficiently.* For purposes of this section, effectively refers to capacity to provide a defined service. It includes considerations of service quality and delivery criteria, such as adequate quantity and timeliness. Efficiently refers to the relative total cost of providing a unit of service.

(c) *Test for adequate supply for services related to area agency statutory functions.* (1) For any of the services directly related to an area agency's statutory functions, direct provision is necessary to assure an adequate supply if the State agency decides that the area agency (or the State agency in a single planning and service area State) can and will perform the services more effectively and efficiently than any other provider.

(2) Services directly related to the statutory advocacy and service delivery functions of the area agency are those which must be performed in a consistent manner throughout the agency's jurisdiction. These services are: information and referral, outreach, advocacy, program development, coordination, individual needs assessment and case management.

(d) *Test for adequate supply for other services.* For any other service under this part except the ombudsman program required by § 1321.43 and the services identified in paragraph (c)(2) of this section, direct provision is necessary to assure an adequate supply if the area agency can and will provide the service substantially more effectively and efficiently than any other provider.

(e) *Services not under this part.* The area agency may plan, coordinate, and provide services funded under other programs if it continues to meet all its area agency responsibilities.

§ 1321.105 Licensure and safety requirements.

All services provided under this part must meet any existing State and local licensure and safety requirements for the provision of those services.

§ 1321.107 Outreach, training, and coordination requirements.

All service providers under this part must comply with procedures established by the area agency for—

(a) Outreach activities to ensure participation of eligible older persons;

(b) Training and use of elderly and other volunteers and paid personnel; and

(c) Coordination with other service providers in the planning and service area.

§ 1321.109 Preference for older persons with greatest economic or social need.

All service providers under this part must follow priorities set by the area agency for serving older persons with greatest economic or social need. Service providers may use methods such as location of services and specialization in the types of services most needed by these groups to meet this requirement. Service providers may not use a means test.

§ 1321.111 Contributions for services under the area plan.

(a) *Opportunity to contribute.* Each service provider must—

(1) Provide each older person with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions; and

(4) Use all contributions to expand the services of the provider under this part. Nutrition services providers must use all contributions to increase the number of meals served.

(b) *Contribution schedules.* Each service provider may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule the provider must consider the income ranges of older persons in the community and the provider's other sources of income.

(c) *Failure to contribute.* A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

(d) *Contributions as program income.* Contributions made by older persons are considered program income.

§ 1321.113 Maintenance of non-Federal support for services.

Each service provider must—

(a) Assure that funds under this part are not used to replace funds from non-Federal sources; and

(b) Agree to continue or initiate efforts to obtain support from private sources and other public organizations for services funded under this part.

§ 1321.115 Advisory role to service providers of older persons.

Each service provider under the area plan must have procedures for obtaining the views of participants about the services they receive.

MULTIPURPOSE SENIOR CENTERS

§ 1321.121 Multipurpose senior centers.

(a) *Purpose of making awards.* The area agency may award social service funds under this part to a public or private nonprofit agency for the following purposes—

(1) Acquiring, altering, leasing, or renovating a facility, including a

mobile facility, for use as a multipurpose senior center;

(2) Constructing a facility, including a mobile facility for use as a multipurpose senior center, subject to the provision of § 1321.131; or

(3) The costs of professional and technical personnel required to operate a center.

(b) *Definitions.* For purposes of this subpart,

(1) "Acquiring" means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

(2) "Altering" or "renovating" means making modifications to an existing facility which are necessary for its effective use as a multipurpose senior center. This includes restoration, repair, expansion and all related physical improvements.

(3) "Constructing" means building a new facility, including the costs of land acquisition and architectural and engineering fees.

(c) *Preference.* In making awards for the purposes specified in paragraph (a) of this section, the area agency must give preference to facilities located in communities with the greatest incidence of older persons with the greatest economic or social need.

§ 1321.123 Health, safety, and construction requirements.

(a) *General.* A recipient of any award for multipurpose senior center activities must comply with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(b) *Life Safety.* If in the judgement of the State agency, existing fire and safety laws, ordinances or codes are inadequate to protect the health and safety of participants, the State agency may require a recipient of any multipurpose senior center award to—

(1) Comply with the provisions of the applicable building occupancy classification of the National Fire Protection Association "Life Safety Code".

(i) These regulations incorporate by reference the "Life Safety Code." (NFPA No. 101, 1976 edition). This incorporation by reference was approved by the Director of the Federal Register on July 17, 1979. This code is available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210 at a cost of $5.00 per copy.

(ii) A copy of the "Life Safety Code" is available for inspection at the Administration on Aging Public Inquiries, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201, and at the Office of the Federal Register Library, Room 8401, 1100 L Street, NW., Washington, D.C. 20408.

(2) Install, in consultation with State or local fire authorities, an adequate number of smoke detectors in the senior center; and

(3) Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situations.

(c) *Architectural Barriers.* The plans and specifications for an award for acquiring, altering, renovating or constructing a multipurpose senior center facility must comply with regulations relating to minimum standards of construction, particularly with the requirements of the Architectural Barriers Act of 1968.

(d) *Technical adequacy.* The State agency must assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The State agency assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes. In absence of these codes, the State agency must assure compliance with Chapter 23 of the Uniform Building Code, or Chapter 12 of the Standard Building Code.

§ 1321.125 Federal labor standards.

A recipient of an award for altering, renovating or constructing a facility to be used as a multipurpose senior center must comply with the requirements of the Davis-Bacon Act and other mandatory Federal labor standards.

§ 1321.129 Length of use of an acquired or constructed facility.

(a) A facility acquired to be used as a multipurpose senior center must be used for that purpose for at least 10 years from the date of acquisition.

(b) A facility constructed to be used as a multipurpose senior center must be used for that purpose for at least 20 years after completion of construction.

(c) The Commissioner upon request from the State agency may waive the requirements specified in paragraphs (a) and (b) of this section in unusual circumstances.

§ 1321.131 Special conditions for acquiring by purchase, or constructing a facility.

(a) The area agency must obtain the approval of the State agency before making an award for constructing a facility.

(b) The State agency may approve the construction of a facility after considering the views of the area agency if it finds that there is no other suitable facility available to be a focal point for service delivery.

(c) The area agency may make an award for purchasing or constructing a facility only if there are no suitable facilities for leasing.

§ 1321.133 Prohibition on sectarian use of a facility.

A facility altered, acquired, renovated, or constructed using funds under this part to be used as a multipurpose senior center may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.

§ 1321.135 Funding and use requirements.

(a) Sufficient funds must be available to meet the non-Federal share of the award;

(b) Sufficient funds must be available to effectively use the facility as a multipurpose senior center;

(c) In a facility that is shared with other age groups, funds received under this part may support only—

(1) That part of the facility used by older persons; or

(2) A proportionate share of the costs based on the extent of use of the facility by older persons; and

(d) A multipurpose senior center program must be operated in the facility.

§ 1321.137 Recapture of payments for acquired or constructed facilities.

(a) The United States government is entitled to recapture a portion of Federal funds from the owner of a facility if within 10 years after acquisition or 20 years after completion of construction—

(1) The owner of the facility ceases to be a public or non-profit private agency or organization; or

(2) The facility is no longer used for multipurpose senior center activities.

(b) The amount recovered under paragraph (a) of this section is that proportion of the current value of the facility equal to the proportion of Federal funds contributed to the original cost. The current value of the facility is determined by an agreement between the owner of the facility and the Federal government, or by an action in the Federal district court in which the facility is located.

NUTRITION SERVICES

§ 1321.141 Nutrition services.

(a) *Purpose of making awards.* The area agency may award nutrition services funds received under this part to provide meals and other nutrition services, including outreach, and nutrition education, to older persons. In making these awards the area agency must assure that congregate meals are provided and that home-delivered meals are provided based on an assessment of need by the area agency and nutrition service providers.

(b) *Eligibility.*

(1) *Congregate nutrition services.* A person age 60 or older, and the spouse of the person regardless of age, are eligible to participate in congregate nutrition services under this part.

(2) *Home-delivered nutrition services.* A person age 60 or over who is homebound by reason of illness, incapacitating disability or is otherwise isolated is eligible to receive a home-delivered meal. The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria deter-

mined by the area agency, receipt of the meal is in the best interest of the homebound older person.

(c) *Assessment of need.* The area agency must assess the level of need for congregate and home-delivered meals within the planning and service area.

§ 1321.143 Selection of nutrition services providers.

(a) *General rule.* The area agency may make awards for congregate and home-delivered nutrition services to a provider that furnishes either or both type(s) of service(s). The area agency may make awards only to providers that meet the requirements of § 1321.145 and § 1321.147.

(b) *Existing nutrition services providers.*

(1) The area agency must award funds to a nutrition services provider that—

(i) Was a nutrition project receiving funds under the former Title VII of the Act on September 30, 1978. For purpose of this requirement, "nutrition project" means the recipient of a subgrant or contract to provide nutrition services, other than the area agency, which met the requirements for a project specified in the former Title VII and implementing regulations.

(ii) Meets the requirements of this subpart; and

(iii) Has carried out its nutrition services activities with demonstrated effectiveness.

(2) The area agency must make awards to a project specified in paragraph (b)(1) of this section for the services authorized under Title III Part C, Subpart 1 and Subpart 2 that the project was providing on September 30, 1978, if the project applies to provide those services. At a minimum, the amount of the awards must equal the amount of the project's award in effect on September 30, 1978 for services allowable under Title III Part C.

(3) Except as provided in 45 CFR part 74, Subpart M, the area agency may not discontinue funding to a nutrition project specified in paragraph (b)(1)(i) of this section unless the State agency—

(i) Has given the project an opportunity for a hearing, in accordance with § 1321.51; and

(ii) Has determined that the project—

(A) Does not meet the requirements of this subpart; or

(B) Has not carried out nutrition services activities with demonstrated effectiveness. The State agency may not set criteria for demonstrated effectiveness that are different from the requirements imposed on projects during the period for which their performance is being measured.

(c) *Existing home delivered meals providers.* Consistent with the requirements of paragraph (b) of this section and, to the extent feasible, the area agency must give preference in making awards for home-delivered meals to public, private nonprofit, and voluntary organizations which—

(1) Have demonstrated an ability to provide home-delivered meals efficiently and reasonably; and

(2) Have furnished assurances to maintain efforts to solicit voluntary support and not to use funds received under this part to supplant funds from non-Federal sources.

§ 1321.145 Special requirements for nutrition services providers.

(a) *Requirements for congregate providers.* Each congregate provider must—(1) Provide hot or other appropriate meals in a congregate setting at least once a day, five or more days a week;

(2) Locate congregate nutrition services as close as possible and, where feasible and appropriate, within walking distance, to the majority of eligible older persons; and

(3) Assess the need for home-delivered meals among participants at its congregate sites.

(b) *Requirements for home-delivered meals providers.* Each home-delivered meals provider must:

(1) Assess the need for home-delivered meals among the participants for whom it has responsibility;

(2) Provide for home-delivered meals at least once a day, five or more days a week. Meals may be hot, cold, frozen,

dried, canned or supplemental foods with a satisfactory storage life; and

(3) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow up, conditions or circumstances which place the older person or the household in imminent danger.

(4) Where feasible and appropriate, make arrangements for the availability of meals to older persons in weather related emergencies.

§ 1321.147 Food requirements for all nutrition services providers.

(a) In purchasing food, and preparing and delivering meals, the nutrition services providers must follow appropriate procedures to preserve nutritional value and food safety.

(b) The nutrition service providers must comply with all State and local health laws and ordinances concerning preparation, handling and serving food.

(c) The nutrition services provider must provide special menus, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. In determining feasibility and appropriateness, the provider must use the following criteria—

(1) Whether there are sufficient numbers of persons who need the special menus to make their provision practical; and

(2) Whether the food and skills necessary to prepare the special menus are available in the planning and service area.

(d) The nutrition services provider must have available for use upon request appropriate food containers and utensils for blind and handicapped participants.

(e) Each meal served by the nutrition services provider must contain at least one-third of the current Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

(f) U.S.D.A. food assistance programs.

(1) *Direct assistance for nutrition services.*

(i) The State agency must have an agreement with the U.S.D.A. State Distributing Agency to assure the availability to nutrition services providers under this part of food, cash, or a combination of food and cash.

(ii) The State agency must distribute all food, cash or the combination of food and cash received from U.S.D.A. through area agencies to nutrition services providers based on each provider's proportion of the total number of meals served in the State.

(iii) The State agency must comply with the requirements of 7 CFR Part 250 for participation in the U.S.D.A. program.

(iv) A nutrition services provider must accept and use appropriate U.S.D.A. food made available by the State agency, and must assure appropriate and cost effective arrangements for the transportation, storage and use of the food.

(v) If a nutrition service provider receives cash instead of food, the provider must spend the cash only for buying United States agriculture commodities and other food.

(2) *Food stamp program.* The nutrition services providers must assist participants in taking advantage of benefits available to them under the food stamp program. The nutrition services provider must coordinate its activities with agencies responsible for administering the food stamp program to facilitate participation of eligible older persons in the program.

LEGAL SERVICES

§ 1321.151 Legal services.

(a) *Purpose of the award.* The area agency must award social services funds under this part for legal services to older persons with economic or social needs. The purpose of awards under this section is to increase the availability of legal services with a priority on older persons with the greatest economic or social need in order to assist them to secure their rights, benefits and entitlements, and to assist them in achieving the objectives of the Act. Legal services provided with funds under this part must be in addition to any legal services already being provided to older persons in the planning and service area.

(b) *Definition.* "Legal services" means legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a non-lawyer where permitted by law, to older persons with economic or social needs.

(c) *Conditions legal service providers must meet.*

(1) A legal service provider must be either—

(i) An organization that receives funds under the Legal Services Corporation Act; or

(ii) An organization that has a legal services program or the capacity to develop one.

(2) The area agency must award funds to the legal services provider(s) that most fully meet(s) the following standards. The legal services provider(s)—

(i) Has staff with expertise in specific areas of law affecting older persons in economic or social need; for example, public benefits, institutionalization and alternatives to institutionalization;

(ii) Demonstrates the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with social or economic need;

(iii) Demonstrates the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(iv) Demonstrates the capacity to effectively deliver legal services to institutionalized, isolated, and homebound individuals;

(v) Has offices and/or outreach sites which are convenient and accessible to older persons in the community;

(vi) Demonstrates the capacity to provide legal services in a cost effective manner; and

(vii) Demonstrates the capacity to obtain other resources to provide legal services to older persons.

(3) Each legal service provider must—

(i) Make efforts to involve the private bar in legal services provided under this part, including groups within the private bar that furnish legal services to older persons on a pro bono and reduced fee basis;

(ii) Ensure that no attorney of the provider engages in any outside practice of law if the director of the provider has determined that the practice is inconsistent with the attorney's full time responsibilities;

(iii) Ensure that while employed under this part, no employee and no staff attorney of the provider at any time—

(A) Uses official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or nonpartisan;

(B) Directly or indirectly coerce, attempts to coercec command or advise an employee of any provider to pay, land, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(C) Is a candidate for partisan elective public office.

(iv) In areas where a significant number of clients do not speak English as their principal language, adopt employment policies that ensure that legal assistance will be provided in the language spoken by those clients;

(v) Adopt a procedure for affording the public appropriate access to the Act, regulations and guidelines under this part, the provider's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the provider determines should be disclosed. The procedure adopted must be approved by the area agency; and

(vi) Ensure that legal services are not provided using funds under this part in fee generating cases, as defined in 45 CFR 1609.2 unless adequate representation is unavailable from private attorneys;

(vii) Ensure that no funds under this part are used to directly or indirectly engage in activities intended to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition except where—

(A) Representation by a provider for a client is necessary with respect to such client's rights and responsibilities (except that no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible), or

(B) A governmental agency legislative body, committee or member thereof requests the provider to testify, draft or review measures or to make representations to such agency, body, committee or member, or is considering a measure directly affecting the activities of a provider under this part; and

(viii) Ensure that, while providing legal services funded under this part, no employee of the provider knowingly participates in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation.

(ix) Ensure that, while employed under this part, no employee of the provider at any time knowingly participates in any:

(A) Rioting or civil disturbance;

(B) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(C) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, these regulations, or the Code of Professional Responsibility; and

(x) Ensure that, while providing legal services funded under this part, no attorney or employee of the provider engages in any voter registration activity.

(4) Each legal services provider that is not a Legal Services Corporation grantee must agree to coordinate its services with Legal Services Corporation grantees in order to concentrate legal services funded under this part on older persons with the greatest economic or social need who are not eligible for services under the Legal Services Corporation Act. In carrying out this requirement, legal services providers may not use a means test or require older persons to apply first for services through a Legal Services Corporation grantee.

(5) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(d) *Case priorities.* A legal service provider under this part may, with the approval of the area agency, set priorities for the categories of cases for which it will provide legal representation in order to concentrate on older persons with the greatest economic or social need. In setting case priorities, a legal service provider may consider the availability of staff resources in determining the extent of legal advice and representation to provide individual older persons.

(e) *Information about income and resources.* A legal service provider may not require an older person to disclose information about income or resources as a condition for providing legal services under this part. A legal service provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

[45 FR 21147, Mar. 31, 1980, as amended at 45 FR 69459, Oct. 21, 1980]

INFORMATION AND REFERRAL SERVICES

§ 1321.161 Information and referral services.

(a) The area plan must provide for information and referral services sufficient to ensure that all older persons within the planning and service area have reasonably convenient access to the service.

(b) In areas in which a significant number of older persons do not speak English as their principal language, the service provider must provide information and referral services in the language spoken by the older persons.

(c) "Information and referral service" means a system to link people in need of services to appropriate resources. A provider of information and referral services must—

(1) Maintain current information with respect to the opportunities and services available to older persons;

(2) Develop current lists of older persons in need of services and opportunities; and

(3) Employ a specially trained staff to inform older persons of the opportunities and services which are available and to assist older persons to take advantages of the opportunities and services.

(d) An information and referral services provider may disclose information by name about an older person only with the informed consent of the older person or his or her authorized representative.

TRANSPORTATION SERVICES

§ 1321.171 Transportation agreements.

The area agency (or the State agency in a single planning and service area State) may enter into transportation agreements with agencies which administer programs under the Rehabilitation Act of 1973 and Titles XIX and XX of the Social Security Act to meet the common need for transportation of service participants under the separate programs. Agreements entered into under this section are exempt from the requirement of § 1321.207.

Subpart I—Fiscal Requirements

§ 1321.181 Allotments and grants to States.

(a) *General rule.* The Commissioner makes annual allotments to each State to pay part of the costs of administration and services under the State plan.

(b) *Types of allotments.* Each State receives separate allotments for—

(1) State agency administration;

(2) Social services including senior center services;

(3) Congregate nutrition services; and

(4) Home delivered nutrition services.

(c) *Amounts alloted for social and nutrition services.* From the sums appropriated each fiscal year for social and nutrition services, each State is alloted an amount based on the ratio of its population age 60 and older to the national population age 60 and older except that—

(1) Each State is alloted at least one-half of one percent;

(2) Guam, the Virgin Islands, and the Trust Territory of the Pacific Islands are each alloted at least one-fourth one percent;

(3) American Samoa and the Northern Mariana Islands are each alloted at least one-sixteenth of one percent; and

(4) No State is alloted less than the State received for The Federal Fiscal Year 1978.

(d) *Amounts alloted for State administration.* From the sums appropriated each Federal fiscal year for State agency administration, each State is alloted an amount based on the ratio of its population age 60 or over to the national population age 60 and older, except that—

(1) Each State is alloted at least one-half of one percent of the sum appropriated, or $300,000, whichever is greater;

(2) Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands and the Northern Mariana Islands are each alloted at least one-fourth of one percent or $75,000, whichever is greater.

(3) No State is alloted less than the State received for the Federal Fiscal Year 1975.

(e) *Grants.* The Commissioner awards grants to States from their allotments.

(f) *Limitation on use.* Except as provided in §§ 1321.191, 1321.195, and 1321.197, a State must use each allotment for the purpose for which it was made.

(g) *Limitation on meaning of "State".* For the purpose of paragraphs (c)(1) and (d)(1) of this section, "State" does not mean Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

SERVICE FUNDING REQUIREMENTS

§ 1321.183 Area agency allotments.

Except as provided in §§ 1321.59, 1321.189, and 1321.195, a State agency must reallot its entire social and nutrition services allotments to area agencies under approved area plans. The area agency must use each allotment for the purpose for which it was made.

§ 1321.185 Expenditures in rural areas.

(a) *General rule.* The State agency must spend under this part in each fiscal year for services to older persons in rural areas at least 105 percent of the amount spent under Titles III, V and VII of the Act in rural areas during the Federal Fiscal Year 1978 for social and nutrition services and multipurpose senior centers.

(b) *Definition of rural area.* For purposes of this section, "rural area" means any area outside a Standard Metropolitan Statistical Area (SMSA) as defined by the Department of Commerce. In planning and service areas which are not entirely metropolitan or nonmetropolitan under the SMSA definition, the State agency, for purposes of paragraph (a) of this section, must separately account for expenditures in the SMSA and non-SMSA areas.

§ 1321.187 Fifty percent priority service requirement.

(a) *General rule.* An area agency must spend at least 50 percent of its social services allotment, excluding amounts used for administration under § 1321.193(c), for the following categories of services, with at least some funds spent in each category—

(1) Services associated with access to other services. These services are transportation, outreach, and information and referral;

(2) In-home services. These services are homemaker and home health aide, visiting and telephone reassurance, and chore maintenance; and

(3) Legal services.

(b) *Waiver.* The State agency, in approving the area plan or a plan amendment, may waive the requirement of paragraph (a) of this section for any category of service for which the area agency demonstrates to the State agency that the services provided from other sources meet the needs of older persons in the planning and service area for that category of service. The State agency must develop and apply criteria that an area agency must satisfy in order to obtain a waiver.

(c) *Revised priority expenditures.* If the area agency receives a waiver for any category of service, it must continue to spend for the remaining categories of services the percentage of the area agency's social service funds agreed on by the State and area agency.

§ 1321.189 Long-term care ombudsman program.

(a) The State agency must use annually at least one percent of the State's allotment for social services, or $20,000, whichever is greater, to operate the long-term care ombudsman program required under § 1321.43.

(b) The requirement of paragraph (a) of this section does not apply in any fiscal year in which the State spends for the ombudsman program from State or local funds an amount equal to the amount required in paragraph (a) of this section.

(c) American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands are not subject to the requirement of paragraph (a) of this section.

§ 1321.191 Transfer between congregate and home-delivered nutrition services funds under the State plan.

(a) A State agency may, without the approval of the Commissioner, transfer from one allotment to the other 15 percent or less of the State's separate allotments for congregate and home delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 15 percent of the State's separate allotments for congregate and home-delivered nutrition services. The State agency must—

(1) Specify the percent and the projected amount which the State agency proposes to transfer from one allotment to the other; and

(2) Specify whether the proposed transfer is for the entire period of the State plan or a portion of the three year period.

(c) The Commissioner approves the State agency's request by approving the State plan or plan amendment. The Commissioner does not deny the transfer unless the Commissioner decides that the transfer is not consistent with the purposes of the Act.

§ 1321.193 Allowable use of funds for State and area plan administration.

(a) *State plan administration.*

(1) Except as provided in § 1321.197(b)(3), the State agency must use its allotment for State plan administration only to carry out the State agency responsibilities specified in Subparts B and D.

(2) The State agency may use any part of its State plan administration allotment which it determines is not needed for that purpose to pay part of the cost of the administration of area plans.

(3) The State agency in a State which is a single planning and service area may use either the State's allotment for State plan administration or not more than 8.5 percent of its allotments for social and nutrition services for State plan administration. The State agency may not use both allotments for this purpose.

(b) *Developing a State plan.* The Commissioner may pay a State without an approved State plan, any part of its allotment for State plan administration to develop an approvable State plan.

(c) *Area plan administration.* The State agency may not award more than 8.5 percent of the total of its combined allotments for social and nutrition services for area plan administration.

§ 1321.195 Additional funds for State plan administration.

(a) *General rule.* If the State agency needs additional funds for State plan administration, the State agency may apply to the Commissioner for permission to use not more than three-forths of one percent of the total amount allotted to it for social and nutrition services.

(b) *Application procedures.* The State agency must submit an application for additional administrative funds in accordance with procedures specified by the Commissioner. The application must demonstrate that—

(1) The State agency needs the additional amount requested to fully and effectively administer its State plan;

(2) The State agency makes full and effective use of its State administration allotment and of the personnel of the State and area agencies; and

(3) The State and area agencies are carrying out, on a full time basis, programs and activities which support the purposes of this part.

(c) *Approval.* The Commissioner approves any application that meets the requirements specified in paragraph (b) of this section.

(d) *Restriction on employee salaries.* A State agency must assure that no funds approved under paragraph (c) of this section will be used to fund a vacancy created by terminating an employee funded from other sources.

§ 1321.197 Obligation and reallotment.

(a) *General rule.* Except as provided in paragraph (b) of this section, the State agency must obligate any funds received under this part during the fiscal year in which they are allotted.

(b) *Reallotment.* (1) If the Commissioner decides that a State will not use an amount allotted under this part for the purpose for which the allotment was made, the Commissioner reallots the unused funds to one or more other States according to their needs. The State agency receiving these reallotted funds must obligate them by the end of the fiscal year following the one in which they are reallotted.

(2) If an Indian tribal organization in a State receives a grant under Title VI of the Act, the Commissioner withholds a portion of the State's allotments for administration, social, and nutrition services. The amount the Commissioner withholds is based on the number of older Indians who are counted both for purposes of the State's allotment under this part and the grant under Title VI. The Commissioner reallots the withheld amount in accordance with paragraph (b)(1) of this section.

(3) If the Commissioner decides that a State does not need for State plan

administration any portion of the State's allotment for State plan administration the State agency may use the amount for social or nutrition services.

§ 1321.199 Federal financial participation.

(a) *State plan administration.* A State agency may use its allotment for State plan administration to pay not more than 75 percent of the costs of administering the State plan.

(b) *Area plan administration.* A State agency may use not more than 8.5 percent of the total of its combined allotments for social and nutrition services to pay not more than 75 percent of the costs of administering area plans.

(c) *Social and nutrition services.* (1) In Fiscal Years 1979 and 1980, a State agency may use its allotments for social and nutrition services to pay not more than 90 percent of the costs of these activities.

(2) Beginning in Federal Fiscal Year 1981, a State agency may use its allotments for social and nutrition services to pay not more than 85 percent of the costs of these activities.

§ 1321.201 Non-Federal share requirements.

The non-Federal share may be met either by allowable cost or third-party in-kind contributions, except as provided § 1321.203.

§ 1321.203 Source of non-Federal share.

(a) At least 25 percent of the non-Federal share in each Federal fiscal year must be in the form of allowable costs of the State or local public agencies, or in the form of third-party in-kind contributions from local public agencies.

(b) The 5 percent increased non-Federal share required under § 1321.199(c) must be in the form of allowable costs of the State.

§ 1321.205 State agency maintenance of effort.

Each fiscal year the State agency must spend under the State plan for both services and administration at least the same amount of State funds it spent under the plan in the previous fiscal year to meet the required non-Federal share applicable to its allotments under this part. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for social and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.207 Restriction on delegation of authority to other agencies.

The State or area agency may not delegate to another agency the authority to award or administer funds under this part.

FEDERAL REVIEWS AND AUDITS IN GENERAL

§ 1321.213 Federal reviews and audits.

A Federal review or audit is performed to determine if a State plan is still approvable, and if the State agency operations and expenditures are proper under Federal requirements, and the approved State plan. A review or audit may cover any aspect of the Title III program and may be performed by HHS, the General Accounting Office, or by another authorized agency.

§ 1321.215 Types and effects of reviews and audits.

(a) *Types.* The types of Federal reviews and audits most often conducted are—

(1) Program and financial reviews described in § 1321.217; and

(2) HHS Audit Agency audits, described in § § 1321.221 and 1321.223.

(b) *Effects.* Any review or audit may lead to a disallowance, formal compliance action, recommendations on how a State agency may improve the administration of its program, or offers of technical assistance.

PROGRAM AND FINANCIAL REVIEWS

§ 1321.217 Program and financial reviews.

(a) *Responsibility for review.* The Administration on Aging conducts program and financial reviews when it considers them appropriate.

(b) *Review findings.* The Administration on Aging makes all review findings available in writing to the State agency so that it can correct any unacceptable policy or practice within a reasonable time. If a review results in a disallowance of a cost, the Commissioner will reduce the State's allotment by the amount disallowed.

§ 1321.219 Issues of compliance after review.

(a) *Resolution of compliance issue.* A compliance issue may arise if the State fails to substantially carry out what is required by Federal requirements, pertinent court decisions and the approved State plan. A compliance issue arises if a previously approved plan provision no longer meets Federal requirements or was approved in error. If the Commissioner believes there is a compliance issue, the Commissioner tries to obtain needed changes in the agency's operating practice or the State plan through negotiation with the State.

(b) *When Issues are not resolved.* If the State agency does not make the changes necessary to bring about compliance, the Commissioner notifies the agency in writing that there is an issue of compliance and advises it of its opportunity for a hearing under Subpart J.

HHS AUDIT AGENCY REVIEWS AND AUDITS

§ 1321.221 Audit Agency reports.

After an audit or review, the Audit Agency releases its final report. The report contains the Audit Agency's findings and recommendations on the practices reviewed and the allowability of expenditures audited.

§ 1321.223 Action after Audit Agency reports.

If the Audit Agency questions an expenditure, the Commissioner may disallow the expenditure and reduce the State's allotment by the amount disallowed. If the Audit Agency finds a compliance issue, the Commissioner, after discussions with the State agency, decides whether to take compliance action and notifies the State agency accordingly.

Subpart J—Hearings Procedures For State Agencies

GENERAL PROVISIONS

§ 1321.231 Scope.

(a) *General procedures.* Hearing procedures described in this subpart apply to notice and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment;

(2) Determination that a State agency does not meet the requirements of this part;

(3) Determination that there is a failure in the provisions or the administration of an approved plan to substantially comply with Federal requirements.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the Department and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart unless there is a specific indication to the contrary. The Department may terminate hearing procedures at any point if the Department and the State negotiate a written agreement that resolves the issue(s) which prompted the hearing.

§ 1321.233 General rules.

(a) *How to get records.* Papers filed in connection with a hearing may be inspected and copied in the office of the HDS Hearing Clerk. Individuals may direct inquiries to the HDS Hearing Clerk, Department of Health and Human Services, 200 Independence Avenue SW., Washington, D.C. 20201.

(b) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the HDS Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be submitted.

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personnel delivery or by mail, and file proof of this service with the HDS Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(c) *When rules are suspended.* After notifying the parties the Commissioner or the presiding officer may modify or waive any rule in §§ 1321.233-1321.261, if the Commissioner or the presiding officer decides the action is equitable and does not unduly prejudice the rights of any party.

ARRANGEMENTS FOR HEARING

§ 1321.235 How to request a hearing.

(a) *General rule.* A State agency has 60 days from receipt of the Commissioner's written notice of proposed disapproval of a State plan, plan amendment, determination that a State agency does not meet the requirements of this part or intended compliance action to request a hearing. The agency shall make its request in writing to the Commissioner with a copy to the Regional Aging Program Director.

(b) *What happens if a State agency does not request a hearing.* If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Commissioner makes a final determination and notifies the agency by letter whether AoA will withhold all further payments under the plan or only payments for those portions of the plan affected by the failure.

§ 1321.237 How request is acknowledged.

(a) *Notice of hearing.* Within 30 days of receiving a hearing request, the Commissioner notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Commissioner publishes the hearing notice in the FEDERAL REGISTER.

(b) *When hearing is held.* The date set for a hearing is 20 to 60 days from the date the agency receives the hearing notice. However, the State agency and the Commissioner may agree in writing to a different date.

§ 1321.239 What the hearing issues are.

(a) *General rule.* The issues at a hearing are those included in the notice to the State agency specified in § 1321.237.

(b) *How the Commissioner may add issues.* At least 20 days before a hearing, the Commissioner notifies the agency by letter of any additional issues to be considered. The Commissioner publishes this notice in the FEDERAL REGISTER. If the agency does not receive its notice of additional issues in the required time, any party may request that the Commissioner postpone the hearing. If a request is made, the Commissioner sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.

(c) *How actions by the State may cause the Commissioner to add, modify, or remove issues.* The Commissioner may add, modify, or remove issues if the State agency:

(1) Changes its practices or organization to comply with Federal requirements and its State plan; or

(2) Conforms its plan to Federal requirements and pertinent court decisions.

(d) *What happens if State action causes the Commissioner to add, modify, or remove issues.*

(1) If the Commissioner specifies new or modified issues, the hearing proceeds on these issues.

(2)(i) If the Commissioner removes an issue, the hearing proceeds on the remaining issues. If the Commissioner removes all issues, the Commissioner terminates the hearing proceedings. The Commissioner may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing an issue, the Commissioner notifies the parties other than the Department and the agency of the issue and the reasons for removing the issue. With 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Commissioner considers these comments and they become part of the record.

§ 1321.241 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

§ 1321.243 Who presides.

The presiding officer at a hearing is the Commissioner or a person the Commissioner appoints. If the Commissioner appoints a presiding officer, the Commissioner sends copies of the appointment notice to the parties.

§ 1321.245 How to be a party or an amicus curiae to a hearing.

(a) *HHS and State agency.* HHS and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amicus curiae.* An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the HDS Hearing Clerk no more than 15 days following publication of the hearing notice in the FEDERAL REGISTER. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely:

(1) Whether the petitioner wishes to be a party or an amicus curiae;

(2) The petitioner's interest in the proceedings;

(3) Who will appear for the petitioner;

(4) The issue on which the petitioner wishes to participate; and

(5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

§ 1321.247 What happens to a petition.

(a) *Petitions to be a party.* (1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.

(2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.

(3) If the presiding officer decides that parties by petition have common interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.

(b) *Petitions to be an amicus curiae.* The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioner's participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice.

§ 1321.249 Rights of parties and amicus curiae.

(a) *What rights parties have.* A party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(b) *What rights amicus curiae have.* An amicus curiae may:

(1) Present an oral statement at the hearing at the time specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time the parties submit briefs.

If an amicus curiae submits a written statement or brief, the amicus shall serve a copy on each party.

CONDUCT OF HEARING

§ 1321.251 Authority of presiding officer.

(a) *General rule.* The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:

(1) Regulating the course of the hearing;

(2) Regulating the participation and conduct of parties, amici curiae, and others at the hearings;

(3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

(4) Taking any action authorized by the rules in this subpart;

(5) Making a final decision, if the Commissioner is the presiding officer;

(6) Administering oaths and affirmations;

(7) Examining witnesses;

(8) Receiving or excluding evidence; and

(9) Ruling on or limiting evidence or discovery.

(b) *What the presiding officer may not do.* The presiding officer may not compel by subpena the production of witnesses, paper, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Commissioner, the officer certifies the entire record to the Commissioner, including a recommended decision on each issue in the hearing, but may not:

(1) Make a final decision; or

(2) Recommend reduction or withholding of payments.

§ 1321.253 Discovery.

A party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26-37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1321.255 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at the hearing for cross-examination by the parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

§ 1321.257 What happens to unsponsored written materials.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 1321.259 What the record is.

(a) *Official transcript.* HHS designates the official reporter for a hearing. The HDS Hearing Clerk has the official transcript of testimony, and any other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and HHS. Upon notice to the parties, the presiding officer may authorize transcript corrections.

(b) *Record.* The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

AFTER THE HEARING

§ 1321.261 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

§ 1321.263 Decisions.

(a) *If the Commissioner is presiding officer.* If the Commissioner is the presiding officer, the Commissioner issues a final decision within 60 days after the time allowed for filing posthearing or reply brief ends.

(b) *If the Commissioner appoints a presiding officer.* (1) After the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Commissioner.

(2) The Commissioner provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Commissioner, exceptions to the recommended decision. The party must file a supporting brief or statement with the exceptions.

(3) The Commissioner reviews the record and, within 60 days of the date of receipt of the presiding officer's recommended decision, the Commissioner issues a final decision. The Commissioner provides copies of the decision to all parties and any amici curiae.

(c) If the Commissioner decides, after a hearing, that the plan or plan amendment is not approvable, that substantial noncompliance exists, or that the State agency does not meet the requirements of this part, the final decision states whether AoA will withhold all further payments or only payments under portions of the plan affected by the failure. This also applies if the hearing terminates prior to completion.

§ 1321.265 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan are changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.267 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Commissioner disapproving the State plan or plan amendment, finding noncompliance, or finding that a State agency does not meet the requirements of this part. The State must file the appeal within 30 days of the Commissioner's final decision.

§ 1321.269 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State, that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements of § 1321.199.

PART 1328—GRANTS TO INDIAN TRIBES FOR SOCIAL AND NUTRITIONAL SERVICES

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AUTHORITY: Title VI of the Older Americans Act (42 U.S.C. 3057).

SOURCE: 45 FR 48388, July 18, 1980, unless otherwise noted.

INTRODUCTION

§ 1328.1 Basis and scope.

This part implements Title VI of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization must meet in order to receive a grant to provide social and nutrition services to older Indians, and to acquire, alter, or renovate a facility for use as an Indian multipurpose senior center. This part also prescribes application and hearing requirements and procedures for these grants.

§ 1328.3 Definitions.

"Act" means the Older Americans Act of 1965, as amended (42 U.S.C. 300 et seq.).

"Area Agency" means the agency designated by the State agency in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older persons.

"Budget Period" means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Commissioner" means the Commissioner on Aging of the Administration on Aging.

"Department" means the Department of Health and Human Services.

"Indian reservation" means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community or non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

"Indian tribe" means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

"Legal Services" means legal advice and representation by an attorney (including to the extent feasible, appropriate counseling or other assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a non-lawyer where permitted by law, to older Indians with economic or social needs.

"Long-term care facility" means any (1) Skilled nursing facility as defined in Section 1861(j) of the Social Security Act; (2) intermediate care facility as defined in Section 1905(c) of the Social Security Act; (3) nursing home as defined in Section 1908(e) of the Social Security Act; and (4) other similar adult care homes as defined by the tribal organization, and approved by the Commissioner in the application for a grant under this part.

"Non-profit" as applied to any agency, institution or organization means an agency, institution, or organization which is owned and operated by one or more corporations or associations with no part of the net earnings benefiting any private share holder or individual.

"Older-Indians" means a member of an Indian tribe who is 60 years of age or older.

"Project period" means the total time for which a project is approved for support, including any extensions.

"Service area" is that geographic area approved by the Commissioner in which the tribal organization provides social and nutrition services to the older Indians residing there.

"Service provider" means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

"State Agency" means the single State agency in each State designated to develop and administer the State plan under Title III of the Act and to be the focal point on aging in the State.

"Tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant. (25 U.S.C. 450b).

§ 1328.5 Applicability of other regulations.

The following regulations in Title 45 of the *Code of Federal Regulations* apply to all activities under this part:

(a) Part 74—Administration of Grants;

(b) Part 75—Informal Grant Appeals Procedures;

(c) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation;

(d) Part 90—Nondiscrimination on the Basis of Age; and

(e) Part 16—Department Grants Appeal Process.

TRIBAL ORGANIZATION REQUIREMENTS

§ 1328.7 Tribal organization eligibility.

(a) A tribal organization is eligible to apply for a grant under this part only if it—

(1) Is authorized by an Indian tribe to represent it for purposes of Title VI;

(2) Represents 75 or more older Indians who will receive services under the Act only under this part;

(3) Demonstrates its ability to deliver social and nutrition services to older Indians by either—

(i) Documenting that it effectively administered social or nutrition services within the last 3 year, including an evaluation, if conducted; or

(ii) Documenting its current organizational capacity to deliver those services; and

(4) Assures that the older Indians it represents under its grant do not receive services under Title III of the Act for the duration of the grant.

(b) A tribal organization may represent older Indians from more than one tribe.

(c) An Indian tribe may authorize only one tribal organization to apply for a grant under this part.

(d) A tribal organization may not provide services funded under 45 CFR Part 1321 to any older Indian represented by the tribal organization under this part.

§ 1328.9 Tribal organization responsibilities.

A tribal organization, must—

(a) Propose the geographic boundaries of its service area. A service area may include all or part of a reservation and any portion of a county or counties which have a common boundary with the reservation. Older Indians in the service area may receive services only under this part. A tribal organization may propose a service area which includes non-contiguous areas if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization;

(b) Establish an advisory council as specified in § 1328.11;

(c) Provide population statistics, as specified in §§ 1328.39 and 1328.43:

(d) Develop and submit a preapplication as specified in § 1328.39;

(e) Use a needs assessment to determine the kinds and levels of services needed by older Indians in the service area who are represented by the tribal organization for purposes of this part;

(1) At a minimum the needs assessment must determine—

(i) What the needs are in the service area for social and nutrition services;

(ii) What services or set of services would meet the needs; and

(iii) How the services or set of services proposed in the application meet the needs;

(2) The tribal organization must document the methods and findings of the needs assessment. If the tribal organization uses a needs assessment done for a State, region or area it must show how it decided the findings were applicable to the older Indians represented under this part;

(f) Develop and submit an application that meets the requirements specified in § 1328.43;

(g) Provide for outreach efforts to identify older Indians and inform them of the availability of services under this part. These efforts may be provided for through coordination with other community agencies;

(h) Coordinate, to the extent feasible, with other community agencies including area agencies on aging, in the service area, in planning and providing services to older Indians;

(i) Provide for an annual evaluation, by a non-profit private organization selected by the tribal organization, of the activities and projects funded under this part;

(j) Give preference, wherever feasible, to employing older Indians for full/and part-time staff positions to carry out activities under this part;

(k) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the services as specified in § 1328.13;

(l) Have procedures to ensure that no information about an older Indian or obtained from an older Indian is disclosed in a form that identifies the person without the informed consent of the person or his or her legal representative, unless the disclosure is required by court order, 45 CFR 74.24, or for other program monitoring by authorized Federal monitoring agencies;

(m) Subject to the confidentiality requirements in paragraph (l) of this section, make available at reasonable times and places, to all interested parties, all information and documents developed or received by the tribal organization in carrying out its responsibilities under this part. The tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552;

(n) Represent the interests of older Indians in the service area;

(o) Provide services under this part only in the service area specified in its approved application;

(p) Have a written agreement with the appropriate USDA unit, if the tribal organization elects to participate in the USDA commodities program as specified in § 1328.21;

(q) Provide services under this part in a fair and uniform manner to all older Indians in the service area consistent with their need, the requirements of the Act and this part, and the policies of the Administration on Aging;

(r) Provide reports in the form and containing information as specified by the Commissioner;

(s) Give the preferences and opportunities for training and employment to Indians in connection with the administration of its grant under this part as required under Section 7(b) of the Indian Self-Determination and Education Assistance Act;

(t) Ensure that all services under this part are provided without consideration of an older Indian's income and resources, or ability to pay for services; and

(u) Ensure full cooperation in any site visit made by representatives of HHS.

§ 1328.11 Advisory council.

(a) The tribal organization must establish an advisory council within 6 months after the date of the award under this part.

(b) The advisory council must be made up of more than 50 percent older

Indians and include participants under this part.

(c) The tribal organization must use the advisory council in—

(1) Developing any subsequent Title VI application;

(2) Implementing any grant under this part; and

(3) Providing advice and guidance on matters concerning the older Indians represented under a grant under this part.

§ 1328.13 Contributions.

(a) *General rule.* A tribal organization must—

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contributions; and

(3) Establish appropriate procedures to safeguard and account for all contributions.

(b) *Contributions schedules.* A tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule the tribal organization must consider the income ranges of older Indians in the community and the tribal organization's other sources of income for the service.

(c) *Failure to contribute.* A service provider that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

(d) *Contributions as program income.* Contributions made by older Indians are considered program income and are to be used for allowable costs of additional services under this part, either in the budget period in which they are earned or in the subsequent budget period.

§ 1328.15 Prohibition against supplantation.

The tribal organization must ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

SERVICES UNDER THIS PART

§ 1328.17 Required and optional services.

(a) *Services that must be provided or provided for under a grant under this part.* A tribal organization that receives a grant under this part must—

(1) Provide the following services to the degree the services are assessed as needed under § 1328.9(e) and funds are available:

(i) Nutrition services, as specified in § 1328.21;

(ii) Legal Services, as specified in § 1328.23; and

(iii) Ombudsman services, as specified in § 1328.27.

(2) Provide for information and referral services as specified in § 1328.25 to the degree the service is assessed as needed under § 1328.9(e) and funds are available. If information and referral services are being provided from other sources than under this part, the tribal organization must demonstrate in its application that the needs of the older Indians in the service area are being met for that category of service.

(b) *Other services that may be provided under a grant under this part.* The tribal organization may provide additional services necessary for the welfare of older Indians that are designed to meet the unique social and nutrition needs of older Indians in the service area. These services may include, but are not limited to, any of the following—

(1) Services which facilitate access, such as transportation, road clearing, outreach, escort, individual needs assessment and service management;

(2) Services provided in the community, such as continuing education, health and health screening, program development and coordination activities, advocacy, individual needs assessmment and service management, casework, counseling and assistance (concerning taxes, financial problems, welfare, the use of facilities and services, preretirement or second career), water services, temporary shelter, day care, protective services, health screening, services designed for the unique needs of the disabled, emergency services, including disaster relief services, residential repair and renova-

tion, physical fitness and recreation services, services in helping to obtain adequate housing. Alteration, renovation, and acquisition of facilities to be used as multipurpose senior centers, are community services for purposes of this part;

(3) Services provided in the home, such as fuel assistance, home health, homemaker services, home health aide services, preinstitutional evaluation, casework, counseling, chore maintenance, visiting, shopping, readers, letter writing, telephone reassurance, home-delivered meals and nutrition education; and

(4) Services provided to residents of care providing facilities, such as casework, counseling, placement and relocation assistance, group services, complaint and grievance resolution and visiting. Care providing facilities include long-term care facilities as defined in § 1328.3, emergency shelters, and other congregate living arrangements.

(c) The tribal organization must use the needs assessment required under § 1328.9(e) to decide the levels of services it will provide under paragraph (a) of this section and which optional services and the level of those services it will provide under paragraph (b) of this section.

§ 1328.19 General services requirements.

(a) The tribal organization may provide services directly or subgrant or contract with a service provider to provide the services. Whether the tribal organization provides services directly or subgrants or contracts with a service provider, the tribal organization is responsible to ensure that all activities funded under this part are provided in compliance with the requirements of this part and other applicable regulations.

(b) If the tribal organization chooses to subgrant or contract with a service provider, it must—

(1) Give the preference to Indian organizations and to Indian-owned economic enterprises required by section 7(b) of the Indian Self-Determiantion and Education Assistance Act;

(2) Ensure that the service provider—

(i) Complies with all applicable service requirements specified in §§ 1328.17 through 1328.37;

(ii) Provides the service effectively and at a reasonable cost; and

(iii) Meets any applicable State and local licensure requirements to provide these services.

§ 1328.21 Nutrition services.

(a) *General rule.* The tribal organization must provide nutrition services to older Indians at home or in a congregate setting, and may provide nutrition services to the spouses of older Indians.

(b) *Food requirements for all nutrition services.* The tribal organization must ensure that—

(1) Appropriate procedures to preserve nutritional value and food safety are followed in purchasing food, and preparing and delivering meals;

(2) Menus are provided to meet the particular health, religious, cultural and dietary needs of eligible older Indians, if feasible and appropriate. In determining feasibility and appropriateness, the provider must use the following criteria—

(i) There are sufficient numbers of persons who need the special menus to make their provision practical; and

(ii) The food and skills necessary to prepare the special menus are available;

(3) Appropriate food containers and utensils are available for use by disabled older Indians upon request; and

(4) Each meal served contains at least one-third of the current Recommended Dietary Allowances established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council.

(c) *Type and frequency of meals served.* (1) The tribal organization must use the needs assessment specified in § 1328.9(e) to decide whether to provide the meals at home or in a congregate setting or both.

(2) The tribal organization must ensure that hot, or otherwise appropriate meals are provided at least once a day, five days a week except in those cases where the tribal organization, on the basis of its needs assessment, can justify less than five days a week.

(d) *USDA assistance for nutrition services.* (1) The tribal organization may elect to receive all or a portion of its entitlement available under Section 311 of the Act in cash or commodities.

(2) To receive commodities, the tribal organization must have an agreement with the United States Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency, or with an agency of the State that has an agreement with the U.S. Department of Agriculture (USDA) for the distribution of food.

(3) To receive cash, the tribal organization must have an agreement directly with FNS.

(4) The tribal organization must comply with the requirements of 7 CFR Part 250 General Regulations and Policies-Food Distribution, for participation in the USDA programs.

(e) *Food Stamps.* Where applicable, the tribal organization must work with agencies responsible for administering the Food Stamp Program to facilitate participation of eligible older Indians.

§ 1328.23 Legal services.

(a) *Purpose.* The tribal organization must provide legal services to older Indians with social or economic needs. The purpose of legal services under this part is to increase the availability of legal aid to older Indians with social or economic needs in order to assist them to secure their rights, benefits and entitlement, and to assist them in achieving the objectives of the Act. Legal services provided with funds under this part must be in addition to, and not in substitution for, any other legal services provided to older Indians represented by the tribal organization, except that legal services which had been provided under Title III of the Act would not continue to be available to older Indians served under this part.

(b) *Conditions legal service providers must meet.* (1) A legal service provider must be either—

(i) An organization that receives funds under the Legal Services Corporation Act; or

(ii) An organization that has a legal services program or the capacity to develop one.

(2) Unless the tribal organization directly provides legal services, the tribal organization must award funds to the legal services provider(s) that most fully meet(s) the following standards. The legal services provider(s) must—

(i) Have staff with expertise in specific areas of law affecting older Indians with economic or social need; for example, public benefits, institutionalization and alternatives to institutionalization;

(ii) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older Indians with social or economic need;

(iii) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(iv) Demonstrate the capacity to effectively deliver legal services to institutionalized, isolated, and homebound individuals;

(v) Have offices and/or outreach sites which are convenient and accessible to older Indians in the community; and

(vi) Demonstrate the capacity to obtain other resources to provide legal services to older Indians.

(3) Each legal service provider must—

(i) Make efforts to involve the private bar in legal services provided under this part, including groups within the private bar that furnish legal services to older persons on a pro bono and reduced fee basis;

(ii) Ensure that no attorney of the provider engages in any outside practice of law if the director of the provider has determined that the practice is inconsistent with the attorney's full-time responsibilities;

(iii) Ensure that while employed under this part, no employee and no staff attorney of the provider at any time—

(A) Uses official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or nonpartisan;

(B) Directly or indirectly coerces, attempts to coerce, command or advise an employee of any provider to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(C) Is a candidate for partisan elective office;

(iv) Ensure that, while providing legal services funded under this part, no attorney and no employee of the provider engages in any voter registration activity;

(v) In areas where a significant number of clients do not speak English as their principal language, adopt employment policies that ensure that legal assistance will be provided in the language spoken by those clients;

(vi) Adopt a procedure for affording the public appropriate access to the Act, regulations and guidelines under this part, the provider's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the provider determines should be disclosed. The procedure adopted must be approved by the tribal organization;

(vii) Ensure that legal services are not provided using funds under this part in fee generating cases, as defined in 45 CFR 1609.2 unless adequate representation is unavailable from private attorneys;

(viii) Ensure that no funds under this part are used to directly or indirectly engage in activities intended to influence the passage or defeat of any legislation by the Congress of the United States or any State or local legislative body or State proposals by initiative petition except where—

(A) Representation by a provider for a client is necessary with respect to such client's rights and responsibilities (except that no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible); or

(B) A governmental agency, legislative body, committee or member thereof requests the provider to testify, draft or review measures or to make representations to such agency, body, committee, or member, or is considering a measure directly affecting the activities of a provider under this part; and

(ix) Ensure that, while providing legal services funded under this part, no employee of the provider knowingly participates in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; and

(x) Ensure that, while employed under this part, no employee of the provider at any time knowingly participates in any:

(A) Rioting or civil disturbance;

(B) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(C) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, these regulations, or the Code of Professional Responsibility.

(4) Each legal service provider that is not a Legal Services Corporation grantee must agree to coordinate its services with Legal Services Corporation grantees in order to concentrate legal services funded under this part on older Indians with economic or social needs who are not eligible for services under the Legal Services Corporation Act.

(5) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) *Case Priorities.* A legal service provider under this part may, with the approval of the tribal organization, set priorities for the categories of cases for which it will provide legal representation in order to concentrate on older Indians with economic or social needs. In setting case priorities, a legal service provider may consider the availability of staff resources in determining the extent of legal advice and representation to provide individual older Indians.

(d) *Information about income and resources.* A legal service provider may not require an older Indian to disclose information about income or resources as a condition for providing legal services under this part. A legal service provider may ask about an individual's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older Indian may be eligible.

[45 FR 48388, July 18, 1980, as amended at 45 FR 69460, Oct. 21, 1980]

§ 1328.25 Information and referral services.

(a) The tribal organization must provide for information and referral services so that older Indians have reasonably convenient access to those services.

(b) If a significant number of older Indians in the service area do not use English as their principal language, the tribal organization must provide for information and referral services in the language those individuals speak.

(c) The tribal organization must establish or have a list of all services that are available to older Indians in the service area;

(d) The tribal organization must provide assistance to older Indians to help them take advantage of the available services; and

(e) The tribal organization must maintain a list of services needed or requested by the older Indians.

§ 1328.27 Long-term care Ombudsman services.

(a) *General rule.* If there is a long-term care facility in the service area that is subject to the jurisdiction of the tribe, a tribal organization must provide an ombudsman program that meets the requirements of paragraphs (b) through (e) of this section. The tribal organization may operate the ombudsman program directly, or by contract or other arrangement, with any public agency or private nonprofit organization, except that no tribal organization, public agency, or private nonprofit organization may operate an ombudsman program if it is—

(1) Responsible for licensing or certifying long-term care facilities or other residential facilities for older persons;

(2) An association, or an affiliate or agent of an association, of long-term care facilities for older persons; or

(3) The owner or operator of the long-term care facility(ies) to be served by the ombudsman program.

(b) *Appointing an ombudsman.* The tribal organization must assure that an individual is designated to serve as the long-term care ombudsman and that the following responsibility(ies) are delegated to the ombudsman—

(1) Investigate and resolve complaints made by, or for, older Indians residing in the long-term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights. "Administrative action" means any action or decision made by an owner, employee or agent of a long-term care facility, or by a government agency, which affects the provision of services to residents covered by this section;

(2) Monitor the implementation of appropriate laws and policies relating to long-term care facilities; and

(3) Provide information to the tribal organization, and to the Commissioner on request, about problems of older Indians residing in long-term care facilities in the service area;

(4) Train volunteers and assist in the development of citizen organizations to participate in the ombudsman program, as feasible; and

(5) Carry out other activities consistent with the requirements of this section which the Commissioner determines appropriate.

(c) *Access.* The tribal organization must establish procedures to ensure that—

(1) The ombudsman program has appropriate access to the long-term care facility(ies) in the service area under the jurisdiction of the tribe and appropriate private access to residents in these facilities; and

(2) The ombudsman and the ombudsman's designees are given appropriate access to residents' personal and medical records.

(d) *Confidentiality and disclosure.* The ombudsman must establish procedures to protect the confidentiality and disclosure of residents' records and files. Those procedures must meet the following requirements:

(1) No information or records maintained by the ombudsman program are

disclosed unless the ombudsman authorizes the disclosure; and

(2) The ombudsman does not disclose the identity of any complainant or resident unless—

(i) The complainant or resident, or a legal representative of either, consents in writing to the disclosure and specifies to whom the identity may be disclosed; or

(ii) A court orders the disclosure.

(e) *Reporting system.* A tribal organization must establish a reporting system to collect and analyze information on complaints and conditions in those long-term care facilities subject to the jurisdiction of the tribe for the purpose of identifying and resolving significant problems. The tribal organization must submit this information to the agency of the tribe responsible for long-term care facilities for the tribe and to the Commissioner in the manner prescribed by the Commissioner.

INDIAN MULTIPURPOSE SENIOR CENTERS

§ 1328.29 What senior center activities may be funded.

The tribal organization may use funds awarded under this part for the following activities:

(a) Acquiring, altering, leasing, or renovating a facility, including a mobile facility, for use as a center; and

(b) Staffing the center.

§ 1328.31 Definitions.

For purposes of § 1328.29 and §§ 1328.33 through 1329.37—

(a) "Altering" or "renovating" means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include restoration, repair, or expansion which is not in excess of double the square footage of the original facility, and all physical improvements; and

(b) "Acquiring" means obtaining ownership of an existing facility for use as a multipurpose senior center.

§ 1328.33 Use requirements.

(a) The tribal organization must have sufficient funds to effectively use a facility that it acquires with funds under this part.

(b) The tribal organization must ensure that a facility acquired for use as a center will be used for this purpose for at least 10 years from the date of acquisition. This requirement supercedes the analogous requirements in 45 CFR 74.134. The Commissioner may waive this requirement in unusual circumstances.

(c) The United States Government is entitled to recapture a portion of Federal funds from the tribal organization if within 10 years after acquisition—

(1) The owner of the facility ceases to be a public or non-profit private agency or organization; or

(2) The facility is no longer used for multipurpose senior center activities.

(d) The amount recovered under paragraph (c) of this section is that proportion of the current value of the facility equal to the proportion of Federal funds contributed to the original cost.

(e) In the case of purchase, the tribal organization must provide reasonable assurances that there are no existing facilities in the community suitable for leasing as a multipurpose senior center.

§ 1328.35 Health and safety requirements.

(a) *General.* If its application contains provisions for any of the activities specified in § 1328.29, except staffing, the tribal organization must comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(b) *Life Safety.* If in the judgment of the tribal organization, existing fire and safety laws, ordinances or codes are inadequate to protect the health and safety of participants, the tribal organization may require a recipient of any multipurpose senior center award to—

(1) Comply with the provisions of the applicable building occupancy classification of the National Fire Protection Association "Life Safety Code."

(i) These regulations incorporate by reference the "Life Safety Code." (NFPA No. 101, 1976 edition). This incorporation by reference was approved by the Director of the Federal Register on July 19, 1980. This code is available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210 at a cost of $5.00 per copy.

(ii) A copy of the "Life Safety Code" is available for inspection at the Administration on Aging Public Inquiries, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201, and at the Office of the Federal Register Library, Room 8401, 1100 L Street, NW., Washington, D.C. 20248.

(2) Install, in consultation with local fire authorities, an adequate number of smoke detectors in the senior center; and

(3) Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situations.

(c) *Architectural Barriers.* If a tribal organization uses any of the funds under this subpart for acquiring, altering, or renovating a multipurpose senior center facility, it must comply with regulations relating to minimum standards of construction, particularly with the requirements of Architectural Barriers Act of 1968 as set forth in 45 CFR 84.23.

(d) *Technical adequacy.* The tribal organization must assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local ordinances, laws, or building codes. In absence of these codes, the tribal organization must assure compliance with Chapter 23 of the Uniform Building Code, or Chapter 12 of the Standard Building Code.

§ 1328.37 Surplus educational facilities from the Bureau of Indian Affairs.

If an eligible tribal organization applies for a grant under this part to renovate a surplus educational facility the Bureau of Indian Affairs (BIA) has made available for use as a center, the tribal organization—

(a) Must include in its application a letter from the Secretary of the Interior, identifying the specific facility and date the tribal organization assumes title;

(b) Must include in its application all documentation of the necessary renovations or alterations, and cost estimates that the Secretary of the Interior may provide;

(c) May renovate the center to become an extended care facility or a community center providing nutrition, social and child care services. If a center will be used for services other than services to older Indians, the tribal organization may use funds under this part only—

(1) To alter that portion of the center used by older Indians; or

(2) For a proportionate share of the alteration costs based on the extent of use of the facility by older Indians.

APPLICATION REQUIREMENTS

§ 1328.39 Preapplication requirements.

(a) *General rule.* In order to establish its eligibility to receive a grant under this part, the tribal organization must submit a preapplication in accordance with the Commissioner's instructions for each project period for which it intends to submit an application.

(b) *Content of the preapplication.* The tribal organization must include in the preapplication information to demonstrate that it meets the eligibility requirements specified in § 1328.7. The preapplication must include—

(1) A description of the tribal organization, including—

(i) The name of the tribal organization;

(ii) The legal and organizational relationship of the tribal organization to the Indians in the area to be served;

(iii) If elected, a description of the election process, voting criteria, and extent of voter participation;

(iv) Whether the tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served, and, if so, evidence of such fact;

(v) Any limitations on authorities granted the tribal organization; and

(vi) The tribal resolution(s) authorizing it to apply for a grant under this part.

(2) Documentation of the number of older Indians that the tribal organization represents. To be eligible the tribal organization must represent 75 or more older Indians, as specified in § 1328.7(a)(1). Older Indians represented under this part may not receive services under 45 CFR Part 1321. Documentation must be certified by the BIA Agency Superintendent, unless the tribal organization uses statistics developed by the Bureau of Census;

(3) Documentation of its ability to deliver social and nutrition services to older Indians, as specified in § 1328.7(a)(2); and

(4) An assurance from the tribal organization that it has methods and procedures to ensure that older Indians represented under this part will not receive services under 45 CFR Part 1321 for the duration of the grant under this part.

§ 1328.41 Determination of eligibility.

(a) The Commissioner evaluates the information submitted in the preapplication and decides if the tribal organization meets the eligibility requirements specified in § 1328.7.

(b) If the Commissioner decides that the tribal organization is eligible, he or she notifies the tribal organization in writing that it is eligible to submit an application for a grant. At the same time, the Commissioner notifies the appropriate State Agency on aging and area agency on aging of the tribal organization's preapplication and determination of eligibility.

(c) If the Commissioner decides that the tribal organization is not eligible, he or she notifies that tribal organization in writing of the reasons why it is not eligible. If the reason for denial of eligibility is the tribal organization's failure to meet the requirements of § 1328.7(a)(3), the tribal organization may request technical assistance from the Commissioner. The Commissioner provides technical assistance, if practicable.

§ 1328.43 Application requirements.

(a) *General rule.* In order to receive a grant under this part, the eligible tribal organization must submit an application in accordance with the Commissioner's instructions for the project and budget periods specified by the Commissioner.

(b) *Information content of application.* The application must include—

(1) A description of the geographic boundaries of the service area proposed by the tribal organization;

(2) The total number of Indians to be served under the grant as provided in § 1328.39(b)(2);

(3) A copy of the needs assessment developed by the tribal organization under § 1328.9(e);

(4) A description of the program and program objectives. Each objective for the proposed program must be measurable and consistent with the purposes of the Act. The program description must specify—

(i) The services the tribal organization proposes to deliver;

(ii) The approximate number of people to be served in each service category;

(iii) Any obstacles to providing the services that have been identified; and

(iv) The plans to provide the services, including how each identified obstacle will be met;

(5) A staffing plan that demonstrates that the tribal organization will have adequate trained personnel to carry out the activities proposed in its application;

(6) A copy of any evaluation for the previous Federal fiscal year required under § 1328.9. This evaluation must demonstrate that the tribal organization satisfactorily performed under its previous grant(s) under this part;

(7) A copy of the tribal organization's proposed budget for the application period; and

(8) Any other information that the Commissioner requires.

(c) *Application assurances.* A tribal organization must provide satisfactory assurances in its application that—

(1) It has methods and procedures to ensure that the older Indians served under the grant do not receive services under Part 1321 for the period of the grant;

(2) It will cooperate fully in any site visits made by representatives of HHS;

(3) It will adopt fiscal control and fund accounting procedures necessary to assure proper disbursement of, and accounting for, Federal funds paid

under this part, including any funds paid by the tribal organization to the recipient of a subgrant or contract; and

(4) It will notify the area agency(ies) and the State Agency on Aging in the planning and service area(s) of its intent to apply and of its receipt of a grant under this part.

(d) *Application standards.* The application must demonstrate that—

(1) The tribal organization will meet satisfactorily the requirements for—

(i) Nutrition services, as specified in § 1328.21;

(ii) Legal services, as specified in § 1328.23;

(iii) Information and referral services; as specified in § 1328.25;

(iv) If applicable, a long-term care ombudsman program, as specified in § 1328.27;

(v) Multipurpose senior center activities as specified in §§ 1328.29 through 1328.37; and

(vi) General services requirements as specified in § 1328.19;

(2) The tribal organization will satisfactorily meet the requirements for—

(i) Tribal organization responsibilities, as specified in § 1328.9;

(ii) Advisory Council, as specified in § 1328.11;

(iii) Contributions, as specified in § 1328.13;

(iv) Prohibition against supplantation, as specified in § 1328.15.

(3) The program the tribal organization proposes is justified by the needs assessment contained in the application, and furthers the purposes of the Act and this part;

(4) The tribal organization has the capacity to carry out the services program it proposes within the budgeted amounts requested and approved.

(5) If the tribal organization decides to apply for any priority announced by the Commissioner, then the tribal organization satisfactorily meets additional requirements that the Commissioner sets for these awards.

(e) *Application signature.* The application must be signed by the principal official of the tribe or his or her designee.

§ 1328.45 Application approval.

(a) The Commissioner approves each application from an eligible tribal organization that meets all Federal requirements, including the requirements of this part. The Commissioner notifies the tribal organization in writing of the approval, and includes in the notice the amount, duration, and effective date of the grant award.

(b) Neither the approval of any application nor any grant award shall commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.

(c) The Commissioner may impose additional conditions with respect to any grant award prior to or at the time of approval of the application when in his or her judgement such conditions are necessary.

§ 1328.47 Application disapproval.

(a) If the Commissioner disapproves an application from an eligible tribal organization, he or she notifies the eligible tribal organization of the disapproval in writing within 60 days of the disapproval. In each disapproval notice the Commissioner—

(1) Specifies each objection to the application; and

(2) Notifies the tribal organization of its rights to request a hearing on the disapproval, and of its right to request technical assistance to overcome each objection to approving the application.

(b) To the extent practicable, the Commissioner provides technical assistance to the tribal organization to assist it to overcome each objection to approving the application.

§ 1328.49 Hearing procedures.

(a) If the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner. The request must be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization must submit to the Commissioner as part of the request, a copy of the notice of disapproval, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request must also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The staff of the Administration on Aging will have the opportunity to respond within 30 days to the merits of the tribal organization's request.

(c) After the staff has responded, the Commissioner sets a date for the hearing. He or she notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to—

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and maintains order, and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause, an extension of any of the time limits specified in this section.

GENERAL PROGRAM REQUIREMENTS

§ 1328.51 Prohibition on consideration of program benefits as personal income.

Benefits derived from this program cannot be considered as part of an older Indian's income in qualifying for other Federal program.

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

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1336.60 Indian preference.

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NOMENCLATURE CHANGES: 45 FR 53806, Aug. 13, 1980.

Subpart A—Definitions

§ 1336.1 Definitions.

For the purposes of this part, unless the context otherwise requires:

"Act" means the Native American Programs Act of 1974.

"Alaskan Native" means a person who is an Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

"Alaskan Native Regional Corporation" means an Alaskan Native Regional corporation established under the laws of the State of Alaska in accordance with the provisions of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971).

"Alaskan Native Village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (Pub. L. 92-203, December 17, 1971), or which meets the requirements of that Act, and which the Secretary of the Interior determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary of the Interior, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

"American Indian or Indian" means any individual who is a member or a descendant of a member of a North American tribe, band, or other organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian community in which he or she lives or by the Indian community of which he or she claims to be a part. This definition also includes Alaskan Natives.

"ANA" means the Administration for Native Americans within the Office of Human Development Services.

"Budget period" means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

"Community" or "Service area" means an Indian reservation, neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to provide services to a designated constituency pursuant to this part.

"Economic and social self-sufficiency" means the capacity of Native Americans to define and achieve their own economic and social goals.

"Economic development" means the process involving the achievement of specific objectives, usually through the implementation of appropriate programs and projects, which results in long-term improvements in Native American economic self-sufficiency.

"Financial assistance" means assistance advanced by ANA by grant, or cooperative agreement, but does not include the procurement of plant or equipment, or goods or services.

"Governing body of an Indian tribe or Alaskan Native village" means those duly elected or appointed representatives who have the authority to provide services to, and enter into contracts and financial assistance agreements on behalf of, their constituency.

"Hawaiian homestead" means that land which was set aside for the particular and exclusive use of Native Hawaiians by the Hawaiian Home Commission Act (42 Stat. 108, July 9, 1921).

"HDS" means the Office of Human Development Services within the Department of Health and Human Services.

"Indian organization" means a public or private nonprofit agency whose principal purpose is promoting the economic or social self-sufficiency of Indians in urban or rural non-reservation areas, the majority of whose governing board and membership is Indian.

"Indian reservation" means the reservation of any federally or State recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community or non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands or lands subject to a restriction against alienation imposed by the United States or a State.

"Indian tribe" means a distinct political community of Indians which exercises powers of self-government.

"Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, earthquake, drought, fire, accident, or other catastrophe which is of such severity and magnitude as to directly affect the capability of the grantee, providing services to the damaged community, to continue the program unless the Federal share of the approved costs is increased above 80 percent.

"Native American" means American Indian, Native Hawaiian, and Alaskan Native, as defined in this subpart.

"Native Hawaiian" means any individual, any of whose ancestors were, prior to 1778, natives of the area which consists of the Hawaiian Islands.

"Open and public election" means an election conducted in accordance with the election procedures as set forth in the organization's constitution and/or by-laws, providing that such procedures ensure wide community participation as well as participation from all members of the community who wish to participate in the elective process. There can be no fee or payment required for participation. This includes the payment of membership dues as a prerequisite for voting.

"Responsible HHS official" means the official of the Department of Health and Human Services authorized to award the financial assistance in question, or his designee.

"Secretary" means the Secretary of Health and Human Services or his designee.

"Urban Indian center" means a multi-purpose nonprofit private agency which provides outreach and referral services as well as a variety of social services to an urban Indian community, and whose governing body is comprised of representatives, a majority of whom are Indian, who have been duly elected by means of an open and public election, and who have the authority to provide services to, and enter into contracts and financial assistance agreements on behalf of the urban Indian constituency.

Subpart B—Purpose of the Native American Program

§ 1336.5 Program purpose.

The purpose of this part is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Financial Assistance for Native American Projects

§ 1336.10 Eligibility.

Financial assistance under this subpart may be made to public and private nonprofit agencies, including but not limited to, governing bodies of Indian tribes on Federal and States reservations, Alaskan Native Villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.11 Types of projects supported.

Financial assistance will be provided to those applicants whose proposed program goals and objectives are to promote the economic and social self-sufficiency of Native Americans. Financial assistance under this subpart will include, but is not limited to, projects which:

(a) Support community economic development;

(b) Support locally determined human service priorities which would not otherwise be provided;

(c) Support the operation of urban Indian centers for Native Americans living off reservations; and

(d) Strengthen the administrative capacities of governing bodies of Native American tribes, groups, and organizations, particularly with regard to planning and management.

§ 1336.12 Approval of financial assistance.

In approving proposals for financial assistance under this subpart consideration will be given to the extent to which proposals focus on priorities consistent with the following ANA long range goals:

(a) To develop the capacity of Native American governing bodies and organizations to use and focus on planning as the basic method to improve resource allocations and effectiveness of services in Native American communities;

(b) To achieve the development of the necessary social and economic infrastructure in Native American communities to increase self-sufficiency; and

(c) To eliminate, through Native American institutions, the most critical gaps in the range of human development services necessary for self-sufficiency including, but not limited to social services, training and education.

Subpart D—Training and Technical Assistance

§ 1336.20 Eligibility.

(a) Contracts for technical assistance to aid in developing, conducting, and administering projects under this part may be made to public and private agencies.

(b) Short-term in-service training for specialized or other personnel may be provided by contract to agencies receiving financial assistance under this part.

§ 1336.21 Types of training and technical assistance.

(a) Contracts for training and technical assistance will be awarded for the purposes of providing management assistance and program assistance.

(1) Contracts to provide management assistance will have as their overall objective strengthening the capabilities of Native Americans to exercise self-government. Such capacity-building efforts will include assistance in planning, management, and organizational development.

(2) Contracts to provide program assistance will be of a general support nature and will include, but are not limited to, assistance in program evaluation, fiscal and administrative management, and resource mobilization.

(b) Management assistance and program assistance may include short-term in-service training for employees of grantees and members of Indian governing bodies, such as tribal council members and Native American organization board members.

Subpart E—Research, Demonstration, and Pilot Projects

§ 1336.30 Eligibility.

Under this subpart, financial assistance may be provided to, or contracts may be made with, public or private nonprofit agencies including, but not limited to, governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act, and such public and nonprofit private agencies serving Native Hawaiians, and Indian organizations in urban or rural non-reservation areas.

§ 1336.31 Scope of research, demonstration, and pilot projects.

(a) Financial assistance or contracts will be provided for research, demonstration, or pilot projects which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise furthering the purposes of this part. This may include: (1) Research activities designed to generate demographic and program impact data and to identify and resolve problems which hinder the attainment of social and economic self-sufficiency by Native Americans; and (2) pilot or demonstration efforts designed to test innovative methods to meet and solve problems related to the purposes of this part and to encourage the delivery of human development services to Native Americans.

Subpart F—Project Evaluations

§ 1336.40 Evaluation.

(a) The Secretary shall provide, directly or through financial assistance or contracts, for the evaluation of projects assisted under this part. Such evaluations shall describe and measure the impact of such projects and their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such projects.

(b) In carrying out evaluations of projects supported under this part, the specific views of persons participating in and served by such projects will be solicited, where feasible. All studies, evaluations, proposals, and data produced or developed with assistance under this part shall become the property of the United States.

(c) Interim standards for the evaluation of program and project effectiveness in achieving the objectives of this part were published on July 2, 1975, in the FEDERAL REGISTER (40 FR 27961). According to Section 810(b) of the Act, the extent to which these standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance under this part. All recipients shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards. When final standards for the evaluation of program and project effectiveness are published in the FEDERAL REGISTER, the extent to which these final standards have been met shall be considered by the Secretary in deciding whether to renew or supplement financial assistance. All recipients shall provide the Secretary with information deemed necessary to determine the extent to which they are complying with these standards.

Subpart G—Financial Assistance Provisions

§ 1336.50 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process (except as provided in § 1336.54).

45 CFR Part 46 Protection of human subjects.

45 CFR Part 74 Administration of grants.

45 CFR Part 75 Informal grant appeals procedures (indirect cost rates and other cost allocations).

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearings under Part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in Federally assisted programs.

(b) 45 CFR § 74.61(h) is superseded as follows:

(1) *Audit requirements*—(i) *General*. An annual project audit shall be made by an independent auditor to determine whether the financial statements fairly present the financial position of the recipient; whether the recipient is complying with the terms and conditions of the grant, including applicable laws, regulations, and directives; and whether appropriate financial and administrative procedures and controls have been installed and are operating effectively.

(ii) *Audit coverage*. The audit shall cover the recipient's prior budget period, unless the responsible HHS official has approved in writing a different audit period.

(iii) *Submission of report*. The auditor shall submit its audit to the recipient within four months after the end of the budget period. HDS financial assistance funds may not be used to pay for more than one audit annually, except in instances when the responsible HHS official requests in writing additional audits.

(iv) *Delegate agencies*. The recipient shall include delegate agency audits as part of its annual audit or shall provide for separate independent audits for its delegate agencies.

(2) *Independent auditor*. The annual project audit shall be conducted by individuals who are sufficiently independent of those persons who authorize the expenditure of financial assistance funds in order that unbiased opinions, conclusions, or judgments may be obtained. Generally, an independent public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, will be retained. If the recipient is a State or local government agency, or if its accounting records are maintained by a local government or public agency, the auditing official or official governmental auditing agency which customarily conducts the agency's audits may be substituted for an independent auditor.

§ 1336.51 Notification to State and local officials.

(a) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a State, other than on an Indian reservation or Alaskan Native village or Hawaiian Homestead, until the responsible HHS official has notified the chief executive officer of the State of his decision to provide that assistance.

(b) Financial assistance will not be provided under Subparts C and E of this part for programs to be carried out in a city, county, or other major political subdivision of a State, other than on an Indian reservation, Alaskan Native village, or Hawaiian Homestead, until the responsible HHS official has notified the local governing officials of his decision to provide that assistance.

§ 1336.52 Cost sharing and matching.

(a) Federal financial assistance shall not exceed 80 percent of the approved cost of the assisted project except as provided in § 1336.52(b).

(b) Increase in Federal financial participation.

(1) Eligibility and application. (i) A recipient is eligible to apply in writing to the responsible HHS official to have the Federal share increased above 80 percent if that recipient is in a community which meets at least one of the following three conditions: (A) The community has a per capita income of less than $1500 per year based on data from the current U.S. Census of Population or any more recent reliable source of annual per capita income data; (B) the community has been involved in a major disaster; (C) the community can document its inability to mobilize local, State, or private resources to satisfy the nonfederal share requirement.

(ii) In those cases where either paragraph (b)(1)(i)(A) or (B) of this section applies, the recipient's application to have the Federal share increased above 80 percent shall provide: (A) The annual per capita income of the community and the basis on which it was determined, or a statement of the belief that the community has been involved in a major disaster, and an explanation of the nature and extent of the major disaster; (B) a statement that the level of the annual per capita income of the community, or the major disaster, does not allow the recipient to meet the 20 percent nonfederal share; (C) a statement of the amount of the nonfederal share the recipient is able to provide; and (D) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful.

(iii) In those cases where paragraph (b)(1)(i)(C) of this section applies the recipient's application to have the Federal share increased above 80 percent shall provide: (A) A statement that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement; (B) a statement of the amount of the nonfederal share the recipient is able to provide; (C) a statement that a reasonable effort to provide more nonfederal share has been unsuccessful; (D) copies of file documents demonstrating attempts to generate revenue from sources such as foundations, churches, and other private organizations; and (E) to the extent they are available, records of in-kind contributions, such as furniture equipment, supplies, and volunteer help to the program.

(iv) An application based upon the annual per capita income of the community, or upon the inability of the community to mobilize local, State, or private resources to satisfy the nonfederal share requirement, shall be submitted at the same time as the application for funding or refunding and shall be with respect to the same budget period as the application. Approval shall be only for such budget period.

(v) An application based upon the involvement of the community in a major disaster shall be submitted within a reasonable time after the major disaster and may be for the remainder of the current budget period and all or part of any subsequent budget period.

(2) *Decision.* (i) The responsible HHS official, on the basis of the written application and any evidence in support of the application that he may require shall approve financial assistance in excess of 80 percent if it is determined that the annual per capita income of the community is less than $1,500, that the community has been involved in a major disaster, or that the community is unable to mobilize local, State, or private resources to satisfy the nonfederal share requirement, and that such increase is required to enable the recipient to carry on the program.

(ii) The decision of the responsible HHS official shall be in writing and shall include a statement of the facts and reasons upon which it is based. Copies of the decision shall be furnished to the applicant and the Commissioner for Native Americans.

(3) The per capita income limitation enumerated in paragraph (b)(1)(i)(A) of this section shall be adjusted annually by multiplying the dollar limitation by the percentage change in the Consumer Price Index.

§ 1336.53 Financial and administrative requirements.

(a) *Maintenance of effort.* Applications for financial assistance awarded under this part shall include a statement that the activities provided under the program will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

(b) *Personnel administration*—(1) *Personnel policies and procedures.* Recipients shall adopt personnel policies and procedures which shall include at least the following: Staff qualifications; recruitment and selection; classification of positions and basis for determination of pay; employee benefits, including leave, holidays, overtime, and fringe benefits; expenses, including travel and per diem; training, career development, and performance evaluation; employee-management relations, including grievance, termination of employment, and other adverse actions; and employee conduct including outside employment, acceptance of gifts and gratuities.

(2) *Documentation of personnel policies.* The personnel policies and procedures required by paragraph (b)(1) of this section shall be documented in writing and shall be issued to, or made available to, all the recipient's employees.

(3) *Conflict of interest.* (i) Recipients shall establish or adopt rules to assure that employees or individuals participating in a program or project funded under this part shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves, or others, particularly those with whom they have family, business, or other ties. This includes, but is not limited to, situations in which a tribal council or governing body member concurrently holds a position as a staff member paid in whole or in part with ANA financial assistance.

(ii) The responsible HHS official may waive the requirement of paragraph (b)(3)(i) of this section when there is the appearance of conflict of interest, but a recipient or delegate agency cannot otherwise adequately staff a position. Such recipient or delegate agency shall demonstrate in writing that no other individual within its community or service area is qualified and/or available for employment.

(4) *Nepotism.* (i) No recipient or delegate agency shall hire, or permit the hiring of, any individual in a position funded in whole or in part under this part if a member of the individual's immediate family is employed by the recipient in an administrative capacity or is a member of the governing board. In addition, no person may serve on a governing board if a member of that individual's immediate family is concurrently serving in an administrative capacity in a position paid in whole or in part with ANA financial assistance. For the purpose of this part, the "term immediate family" means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or other legal dependent; the term "administrative capacity" means a position having responsibilities relating to the selection, hiring, or supervising of employees.

(ii) The responsible HHS official may waive the requirement of paragraph (b)(4)(i) of this section when a recipient or delegate agency cannot adequately staff the positions without hiring more than one person from the same immediate family. Such recipients or delegate agencies shall demonstrate in writing that no other individuals within its community or service area are qualified and/or available for employment.

(5) *Labor standards.* The Act makes construction contracts and subcontracts under this program subject to the Davis-Bacon Act (40 U.S.C. 276a et seq.). Recipients must observe requirements for enforcing compliance by contractors found in Subpart P of 45 CFR Part 74.)

(c) *Delegation of program operations.* A delegation of program operations to a delegate agency shall require specific prior approval by the responsible HHS official. Such delegation shall be formalized by written agreement. The agreement shall specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. A budget for each delegate agency shall be submitted as part of the recipient's application.

[44 FR 24073, Apr. 24, 1979; 44 FR 37616, June 28, 1979]

§ 1336.54 Appeals.

Appeals, notice and hearing. Recipients that have been suspended or terminated, or whose applications for refunding have been denied, may appeal such decisions in accordance with the provisions of Part 1303, Subparts A, C, and D, of this title except that for purposes of this part:

(a) The authority "88 Stat. 2304, (42 U.S.C. 2928h)" is eliminated and "88 Stat. 2324, (45 U.S.C. 2991h)" is substituted therefor;

(b) The citation "Section 519 of the Headstart-Follow Through Act" is eliminated and "Section 809 of the Native American Programs Act" is substituted therefor;

(c) The reference to "* * * appeals by current and prospective delegate agencies from specified adverse action by grantees * * *" in § 1303.1 is inapplicable;

(d) The term "ACYF" is eliminated and the term "ANA" is substituted therefor;

(e) The term "Commissioner" means the Commissioner for Native Americans;

(f) The term Head Start Program" is eliminated and the term "Native American Program" is substituted therefor;

(g) The terms "current delegate agency", "prospective delegate agency", "program account", and "substantial rejection" are eliminated;

(h) The term "Headstart-Follow Through Act" is eliminated and the term "Native American Programs Act" shall be substituted therefor;

(i) The phrase "in accordance with Part 1302 of this chapter" in §§ 1303.20 and 1303.30 is eliminated; and

(j) The term "grantee" means the recipient of financial assistance from ANA under the Act and this part.

Subpart H—Indian Preference Provisions

§ 1336.60 Indian preference.

(a) As provided in section 7(b) of Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act, any contract, subcontract, grant, or subgrant pursuant to the Native American Programs Act of 1974 which is for the benefit of Indians shall require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts of grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

(b) Preference in the award of contracts for the benefit of Indians shall be given by ANA to Indian organizations and to Indian-owned economic enterprises.

SUBCHAPTER E—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAM

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAM

Subpart A—General

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Subpart D—Coordination of Federal Programs and Activities Related to Child Abuse and Neglect

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1340.4-3 Reports and Materials.
1340.4-4 Coordination Process.

AUTHORITY: Secs. 2-5 and 7, Pub. L. 93-247, 88 Stat. 4, as amended by Sec. 8(d), Pub. L. 93-644, 88 Stat. 2310 (42 U.S.C. 5101-5103).

SOURCE: 39 FR 43937, Dec. 19, 1974, unless otherwise noted.

Subpart A—General

§ 1340.1-1 Purpose of the program.

(a) The basic purpose of this program is to assist States and localities, and nonprofit private organizations in carrying out their responsibilities for the protection of children and for the amelioration of their environment, particularly as an integral part of a family unit whose adult member(s) need help in coping with emotional or environmental stresses.

(b) The main thrust of this program effort is to assist State, local, and voluntary agencies and organizations to strengthen their capacities to develop programs that will:

(1) Prevent child abuse and neglect;

(2) Identify abused and neglected children; and

(3) Provide necessary ameliorative services to them and their families.

(c) In order to achieve this purpose, the National Center on Child Abuse and Neglect will:

(1) Develop, gather, analyze, and disseminate information on child abuse and neglect research, public and private programs, training materials, and the national incidence of child abuse and neglect;

(2) Provide technical assistance to public agencies and nonprofit private organizations to assist them in their activities relating to the prevention, identification, and treatment of child abuse and neglect;

(3) Conduct research in order to develop new techniques in identifying, preventing, and treating child abuse and neglect; and

(4) Make grants and enter into contracts for demonstrations and program models designed to develop and estab-

lish improved training programs, more effective service delivery vehicles, and for other innovative programs and projects showing promise of successfully preventing or treating child abuse and neglect.

(d) In seeking to directly assist and encourage States to improve their capacity to identify, prevent, and treat child abuse and neglect, the Secretary will:

(1) Provide Federal financial assistance under the Act to States meeting the requirements therefore; such assistance is designed to enable States to develop, strengthen, and carry out activities related to child abuse and neglect, and

(2) Require the single State agencies to meet specified requirements in order to receive assistance for activities related to child abuse and neglect assisted under Part A or B of Title IV of the Social Security Act.

§ 1340.1-2 Definitions.

For purposes of this part—

(a) "Act" means the Child Abuse Prevention and Treatment Act, 88 Stat. 4 (Pub. L. 93-247), unless otherwise specified.

(b) "Child abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

(1) "Harm or threatened harm to a child's health or welfare" can occur through: Non-accidental physical or mental injury; sexual abuse, as defined by State law; or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. *Provided*, However, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian; *However*, such an exception shall not preclude a court from ordering that medical services be provided to the child, where his health requires it.

(2) "Child" means a person under the age of eighteen.

(3) "A person responsible for a child's health or welfare" includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution.

(c) "Director" means the Director of the Office of Child Development.

(d) (1) "Facility" means a building or portion thereof used to house programs or services designed to treat or prevent child abuse and neglect such as attention homes; emergency shelters; nurseries or treatment rooms or wards; central reporting registers; hot line services; diagnostic treatment and training centers; hospital emergency rooms and neighborhood health centers; and other services or programs established to deal with the prevention and treatment of child abuse and neglect.

(2) "Repair or minor remodeling or alteration of an existing facility" means the physical modification of the facility, the cost of which must be reasonable in relation to the total proposed cost of the program or project and is consistent with the provisions of Chapter I-44 of the Grants Administration Manual of the Department of Health and Human Services.

(e) "Non-profit private organization" means a corporation or association, the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(f) "Project period" means the total period of time for which a project is approved for support with Federal funds.

(g) "Secretary" means the Secretary of the Department of Health and Human Services.

(h) 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territory of the Pacific.

(i) "The single State agency" means the State agency administering or supervising the administration of the State plan under title IV-A and IV-B of the Social Security Act.

(j) As used in this part, words importing the masculine gender may be applied to female persons or organizations.

[39 FR 43937, Dec. 19, 1974, as amended at 41 FR 53663, Dec. 8, 1976]

§ 1340.1-3 General administrative requirements.

(a) The provisions of Part 74, Administration of Grants, of this title shall apply to all grants made under this part.

(b) Any contract under this part shall be entered into in accordance with and shall conform to all applicable laws, regulations, and other published Departmental policy.

[39 FR 43937, Dec. 19, 1974, as amended at 41 FR 53663, Dec. 8, 1976]

§ 1340.1-4 Application for a grant.

(a) An application for a grant under this part shall be submitted by such time and in such form and manner as the Director may prescribe. The application shall contain a budget and narrative plan of the manner in which the applicant intends to conduct the project and carry out the applicable requirements of this part.

(b) The application must be signed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the statute, the applicable regulations of this part, and any additional conditions of the grant.

§ 1340.1-5 Awards.

All grant awards and contract awards for programs or projects under the Act shall be in writing and shall constitute the encumbrance of the Federal funds awarded. An award shall specify the project period.

§ 1340.1-6 Conflict of interest.

Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves, or others, particularly those with whom they have family, business or other ties.

§ 1340.1-7 Non-allowable costs.

(a) Federal financial assistance is not available under the Act for the construction of facilities.

(b) No Federal financial assistance may be furnished under the Act for the cost of activities for which payment is made under another part of this chapter or under other authority for the same purpose.

§ 1340.1-8 Grant appeals.

When a post-award dispute arises in the administration of grants under the Act following certain determinations adverse to a grantee, the grantee may apply for a review of such determination in accordance with the provisions of Subtitle A, Part 16, of this title.

§ 1340.1-9 Civil rights.

Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252 (42 U.S.C. 2000d et seq.)) and in particular section 601 of such act, which provides that no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, which applies to grants and contracts made under this part, has been issued by the Secretary of Health and Human Services with the approval of the President (45 CFR Part 80).

§ 1340.1-10 Non-discrimination of handicapped.

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program, project, or activity assisted under the Act. No otherwise qualified individual shall be denied employment in any program, project, or activity assisted under this part solely because of a physical or mental disability (Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)).

§ 1340.1-11 Project duration.

Programs and projects may be approved for a period not to exceed five years. Program and project budgets must be submitted and will be reviewed and approved annually.

§ 1340.1-12 Program and project plan amendments.

(a) The grantee shall submit an amendment describing any material change in the plan of his program or project proposed to be made during the project period. Proposed program or project plan amendments shall be submitted in writing for appropriate review prior to consideration by the Director.

(b) Proposed program and project plan amendments may be initiated by the Director if, on the basis of reports, it appears that Federal funds are being used for purposes beyond the scope of the approved project application.

§ 1340.1-13 Protection of human subjects.

The provisions of Part 46 of Subtitle A of this title, the Protection of Human Subjects, shall apply to all grants and contracts assisted under the Act supporting research, development, and related activities in which human subjects at risk, as defined in 45 CFR Subtitle A, § 46.3(b), are involved.

§ 1340.1-14 Publications and copyright policy.

(a) The results of any activity supported under this part may be published without prior review by the Department: *Provided*, That such publication's preface shall acknowledge the Federal assistance received and stating that interpretations of data do not necessarily represent interpretations of the Department and *Provided, further*, That 35 copies of such publication are furnished to the Department.

(b) Where a project activity leads to the publication of a book or other copyrighted material, the author is free to copyright the work, but the Department reserves royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use all copyrightable or copyrighted material resulting from the grant-supported activity. Any such publication shall contain a notice of such license.

§ 1340.1-15 Reports.

Reports shall be made to the Director in such form and containing such information as the Director may find necessary to enable the Director to perform his functions under this part.

Subpart B—Demonstrations, Technical Assistance, and Other Activities

§ 1340.2-1 Demonstrations.

(a) *Eligible applicants or contractors.* The Director will make grants to or enter into contracts with public agencies or nonprofit private organizations (or combinations thereof) for demonstration programs and projects.

(b) *Nature of demonstration programs and projects.* (1) Such demonstrations may include, but are not limited to pilot or experimental efforts to provide additional and more effective ways of preventing, identifying or treating child abuse and neglect than are currently available; testing the feasibility of providing child abuse and neglect services in new settings or under new conditions; innovative programs and methods of providing preventive and treatment services in urban and in rural areas; methods of coordinating most effectively the variety of disciplines and agencies involved in child abuse and neglect; the establishment and maintenance of facilities, such as central registers, satellite centers, attention homes, emergency shelters, hospital emergency rooms, neighborhood health centers, and "hot lines"; provision of consultation by teams to small communities; programs for the prevention and treatment of child abuse related to drug abuse; and, parent self-help projects and programs.

(2) All such demonstrations shall be evaluated, either as a part of the program or project or through a separate contractual effort. All demonstration programs should include provisions for continuing the program within the agency or organization or under other auspices upon the termination of funding under the Act. These provisions should be reasonable and firm commitments rather than hopeful expectations.

(c) *Manner of solicitations.* (1) Grant applications will be solicited through Program Announcements specifying the project goals and objectives for which applications are being solicited, the criteria by which they will be judged, the amount of funds available for such grants, and the deadline for receipt of applications.

(2) Contracts will be awarded in accordance with the procurement regulations of the Department of Health and Human Services (41 CFR Subtitle A, Part 3).

(d) *Per centum of appropriation.* Not less than 50 per centum of the funds appropriated under the Act for any fiscal year shall be used for carrying out the provisions of subsection 4(a) of the Act.

(e) *Special criterion for selection—equitable distribution.* (1) The formula prescribed in § 1340.3-7, which includes for each State a minimum amount and an additional amount based on the number of children under the age of eighteen, is designed to achieve equitable distribution of assistance among the States.

(2) In the selection of applications submitted under this subpart which are judged to be of approximately equal merit, the Director will take into account the extent to which the selection of one applicant as against the other may achieve equitable distribution of assistance among geographic areas of the Nation and among rural and urban areas.

§ 1340.2-2 Technical assistance.

Technical assistance authorized in subsection 2(b)(4) of the Act will be furnished by the National Center on Child Abuse and Neglect directly, by grant, or by contract, to public agencies and nonprofit private organizations to assist them in planning, improving, developing and carry out programs and activities relating to the prevention, identification, and treatment of child abuse and neglect.

[41 FR 53663, Dec. 8, 1976]

§ 1340.2-3 Training materials and training.

The National Center on Child Abuse and Neglect, directly, through grants, or through contracts, will develop, compile and publish training materials and conduct training for personnel who are engaged or intend to engage in the prevention, identification, and treatment of child abuse and neglect.

[41 FR 53663, Dec. 8, 1976]

§ 1340.2-4 Research.

The National Center on Child Abuse and Neglect will conduct research into the causes of child abuse and neglect and into the prevention, identification, and treatment thereof. Such research will include a complete and full study and investigation of the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number or severity.

§ 1340.2-5 Confidential information.

(a) All information including lists of names, addresses, photographs and records of evaluation, obtained as to personal facts about individuals served by any demonstration, research, training or technical assistance project or program assisted under the Act shall be held to be confidential and may not be disclosed except as provided in paragraph (b) of this section.

(b) The use of such information and records shall be limited to purposes directly connected with the administration of the program or project, including evaluations thereof conducted under contract from the Department of Health and Human Services, and such information may not be disclosed, directly or indirectly, other than for such a purpose thereof or pursuant to the requirements of § 1340.3-3(d)(5), unless the written consent of the agency providing the information and the individual to whom the information applies or his representative has been obtained. No report or other documentation of a program or project to be disclosed outside the program or project may contain information that might serve to identify any person without his written consent or that of his representative.

Subpart C—Child Abuse and Neglect Grants to States Under the Act and Under Title IV of the Social Security Act

§ 1340.3-1 Purpose and eligible applicants.

(a) States that qualify under § 1340.3-2, may receive grants to initiate or continue the support of programs or projects of the State or one of its political subdivisions which can be expected to assist the State in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs. The Act also requires that the single State agency comply with certain requirements in order to begin or continue the receipt of funds for programs or projects related to child abuse and neglect assisted under Part A or B of Title IV of the Social Security Act.

(b) This subpart describes the process States must follow to establish their compliance and to apply for funds provided under section 4(b)(1) of the Act (Pub. L. 93-247). The process the single State agency must follow to establish compliance under the Act (and under the Social Security Act) is described in 45 CFR Part 220.[1]

§ 1340.3-2 Establishment of compliance.

(a)(1) In order to be eligible for Federal financial assistance for programs or projects related to child abuse and neglect assisted under section 4(b)(1) of this Act, a State shall provide, in such form and with such documentation as the Secretary may require, a statement that the State meets the requirements of the Act and of this part, signed by the Governor. All legal opinions shall be certified by the Attorney General of the State.

(2) In order to be eligible for Federal financial assistance for programs or projects related to child abuse and neglect assisted under Part A or B of Title IV of the Social Security Act, the single State agency shall provide, in such form and with such documentation as the Secretary may require, a statement that it meets the requirements of the Act (Pub. L. 93-247) and the Social Security Act, in accordance with regulations published in 45 CFR Part 220.[1]

(3) For programs or projects funded under section 4(b)(1) of the Act, the requirements are set forth in § 1340.3-3(d) (1)-(10). For programs or projects funded under Part A or B of Title IV of the Social Security Act, the requirements are set forth in 45 CFR Part 220.[1]

(b) Whichever State office, agency, or organization is designated by the Governor, may apply for financial assistance under section 4(b)(1) for the payment of reasonable and necessary expenses in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs. Such State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect. Such State office, agency, or organization designated by the Governor may enter into purchase agreements with other offices, agencies, or organizations (including Indian Tribal governments) to conduct activities under the grant. The application for such funds shall include a description of the activities presently conducted by the State and its political subdivisions in relation to preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to develop, strengthen or carry out child abuse prevention and treatment programs, together with a budget in the form and detail and in accordance with the procedures prescribed by the Secretary, and such additional information in such form and with such documentation as the Secretary may require.

§ 1340.3-3 Qualification for assistance.

(a) The Act enumerates ten elements of a comprehensive system to prevent and treat child abuse and neglect which a State must have in order to qualify for assistance under section 4(b)(1). The enactment of identical laws and procedures in the States is not necessary. Rather, as its purpose, the Act seeks to insure that all States receiving assistance under this subsection (in meeting the ten requirements) must provide what may be grouped into four fundamental child protective capabilities: (1) Detection through third party reporting of children in danger, including mandatory and permissive reporting of suspected child abuse and neglect; (2) child protective services to provide non-criminal investigations for the verification of reports, to provide immediate protection of children through such means as protective custody, and to provide rehabilitative and ameliorative services; (3) juvenile or family court action to remove a child or to impose treatment services; and (4) law enforcement investigations and criminal court prosecution, when appropriate.

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[1] Part 220 was redesignated as Part 1392 at 45 FR 56691, Aug. 25, 1980.

(b) Similarly, it is not necessary for States to adopt language for the definition of "child abuse and neglect" identical to that used in the Act. A State definition which is the same in substance as the one set forth in this part will be sufficient. In addition, nothing in this part is intended to prevent a State from further elaborating on the definition or from providing additional grounds to consider a child abused or neglected. This part takes this approach in recognition of the need to allow and encourage flexibility and innovation in light of the diverse local conditions found from State to State and community to community.

(c) Finally, in order to facilitate compliance, this part makes a distinction between requirements that can be satisfied by a specific State law and those that can be satisfied by a legally authorized and legally binding administrative procedure, if certified by the State's Attorney General.

(d) In order for a State to qualify for assistance under section 4(b)(1) of the Act, the State shall satisfy each of the following ten requirements:

(1) The State must have in effect a child abuse and neglect law which includes provisions for immunity for all persons reporting, whether mandated by law or not, instances of known or reasonably suspected child abuse and neglect, from civil or criminal prosecution under any State or local law, arising out of such reporting. In the absence of a specific statutory provision in an existing child abuse and neglect reporting law, this requirement may be satisfied, but only until July 1, 1975, or the close of the next session of the State legislature, whichever is later, by a legal opinion of the State's Attorney General holding that such immunity exists under State law.

(2)(i) The State must provide for the reporting of known or suspected instances of child abuse and neglect. This requirement shall be deemed satisfied if a State requires specified persons by law, and has a law or administrative procedure which requires, allows, or encourages all other citizens, to report known or suspected instances of child abuse and neglect to one or more properly constituted authorities with the power and responsibility to perform an investigation and take necessary ameliorative and protective steps as required in paragraph (d)(3) of this section. A properly constituted authority may include the police, the juvenile court or any agency thereof, or a legally mandated, public or private child protective agency: *Provided.* However, that a properly constituted authority must be an agency other than the agency, institution or facility involved in the acts or omissions, if the report of child abuse and neglect involves the acts or omissions of a public or private agency or other institution or facility.

(ii) In the absence of a specific statute, the requirements of this subsection may be satisfied by an opinion of the State Attorney General holding that the State administrative procedures in this regard are legally binding.

(3)(i) A State must provide that upon the receipt of a report of known or suspected instance of child abuse or neglect an appropriate investigation by a properly constituted authority shall be initiated promptly to substantiate the accuracy of the report. Such investigation may include contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, and psychological and social evaluations.

(ii) The State must provide further that, upon a finding of abuse or neglect, immediate steps, as required by law and/or administrative procedure, shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. Such steps may include multidisciplinary teams, instruction in education for parenthood, protective and preventive social counselling, foster care, emergency caretaker service, emergency homemaker service, emergency shelter care, emergency medical service, and, if appropriate, criminal court or juvenile court action, in order to protect the child and help strengthen the family, help the parents in their child rearing responsibilities, and if necessary, remove the child from a dangerous situation.

(4) The State must demonstrate that there are in effect throughout the State, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multidisciplinary programs and services as may be necessary or appropriate to assure that the State has operational procedures and capabilities sufficient to deal effectively with child abuse and neglect cases in the State. Such operational procedures and capabilities shall include: provision for receipt, investigation and verification of reports; provision for the determination of treatment or ameliorative social service and medical needs; provision of such services; and, when necessary, resort to criminal or juvenile court.

(5) The State must provide for methods to preserve the confidentiality of all records concerning reports of child abuse and neglect in order to protect the rights of the child, his parents or guardians. This section shall be satisfied only if a State has a law which makes such records confidential and which makes any person who permits or encourages the unauthorized dissemination of their contents guilty of a crime. Such law may allow access to such records but only to the following agencies and persons: (i) A legally mandated, public or private child protective agency investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of a report or record; (ii) a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect; (iii) a physician who has before him a child whom he reasonably suspects may be abused or neglected; (iv) a person legally authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or neglected and such person requires the information in the report or record in order to determine whether to place the child in protective custody; (v) an agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record, or a parent, guardian, or other person who is responsible for the child's welfare; (vi) any person named in the report or record who is alleged to be abused or neglected; if the person named in the report or record is a minor or is otherwise incompetent, his guardian ad litem; (vii) a parent, guardian, or other person responsible for the welfare of a child named in a report or record, with protection for the identity of reporters and other appropriate persons; (viii) a court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it; (ix) a grand jury upon its determination that access to such records is necessary in the conduct of its official business; (x) any appropriate State or local official responsible for the child protective service or legislation carrying out his official functions; (xi) any person engaged in a bona fide research purpose, provided, however, that no information identifying the subjects of the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the appropriate State official gives prior approval. Nothing in these regulations is intended to affect a State's laws or procedures concern-

ing the confidentiality of its criminal court and its criminal justice system.

(6) The State must provide for the cooperation of law enforcement officials, courts of competent jurisdiction, and all appropriate State agencies providing human services in relation to preventing, identifying and treating child abuse and neglect. Such cooperation may include joint consultation and services, joint planning, joint case management, joint public education and information service, utilization of each other's facilities, and joint staff and other training.

(7) The State must provide that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem shall be appointed to represent the child in such proceedings. The requirement of this clause may be satisfied by a State law or by a legal opinion of the State's Attorney General holding that such appointments can be made, and by a statement from the Governor that such appointments are made, in all cases. Such guardian ad litem need not be an attorney; however, such representative may be an attorney charged with the presentation in a judicial proceeding of the evidence alleged to amount to the abuse and neglect, so long as his legal responsibility includes representing the rights, interests, welfare, and well-being of the child; where such appointments are made, the legal opinion of the State Attorney General must specify that such attorney has said legal responsibility.

(8) The State must provide that the aggregate of State support for programs or projects related to child abuse and neglect assisted by State funds shall not be reduced below the level provided during Federal fiscal year 1973 and set forth policies and procedures designed to assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects.

(9) The State must provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and the preventión and treatment methods available to combat instances of child abuse and neglect; and

(10) To the extent feasible, the State must insure that parental organizations combating child abuse and neglect, as recognized by the State, receive preferential treatment.

§ 1340.3-4 Approval of compliance statements and plan amendments.

(a) The Secretary shall approve a compliance statement submitted under this subpart if he finds that it meets the requirements of this subpart and of the Act.

(b) If a State does not appear to meet the requirements of this subpart, the State will be provided reasonable opportunity to qualify before final action on the application or continued extension of funds is taken by the Secretary.

(c) The requirement that a single State agency must comply with section 4(b)(3) of the Act and 45 CFR Part 220[1] in order to continue receiving funds for programs or projects related to child abuse and neglect assisted under Part A or B of Title IV of the Social Security Act shall take effect on July 1, 1975, or the close of the State's next legislative session, whichever is later.

§ 1340.3-5 Approval of applications, plan amendments, and funds.

(a) The Secretary shall approve an application for funds under section 4(b)(1) of the Act if he finds: (1) That the State applying for such funds qualifies for such funds under section 4(b)(2) of the Act, (2) that the funds are intended to be used to develop, strengthen, or carry out child abuse or neglect prevention or treatment programs, (3) that the State is otherwise in compliance with these regulations, and (4) that the funds requested are within the State's allocation as determined pursuant to § 1340.3-7.

(b) The Secretary shall approve the initial or continued use of funds for the single State agency's programs or projects related to child abuse and neglect assisted under Part A or B of Title IV of the Social Security Act if he finds that the single State agency qualifies for such funds under the Act (Pub. L. 93-247) and under the Social Security Act, in accordance with the regulations published in 45 CFR Part 220.[1]

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[1] Part 220 was redesignated as Part 1392 at 45 FR 56691, Aug. 25, 1980.

§ 1340.3-6 Funds available.

Not less than 5 per centum and not more than 20 per centum of the sums appropriated under the Act shall be used by the Secretary for making grants to the States under subsection 4(b)(1) of the Act.

§ 1340.3-7 Allocation of funds available.

(a) Funds available for grants to States for a fiscal year under section 4(b)(1) of the Act shall be allocated among the States on the basis of the following criteria:

(1) An amount of $20,000, or such other amount as the Secretary may determine, for a fiscal year, plus,

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (after providing for the minimum amounts in paragraph (a)(1) of this section as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. The number of children under the age of eighteen to be used in this allocation shall be the number as determined by official estimates furnished to the Secretary by the Department of Commerce by October 1 of the fiscal year for which Federal grant funds are appropriated.

(b) The Director will announce the allocations available to the States under section 4(b)(1) of the Act and this subpart.

§ 1340.3-8 Reallocation of funds available.

If a State has not qualified for assistance under section 4(b)(1) of the Act prior to the date designated by the Secretary in each fiscal year, the amount previously allocated to that State under § 1340.3-7 shall be used by the National Center on Child Abuse and Neglect for such purposes under the Act as the Secretary shall determine.

Subpart D—Coordination of Federal Programs and Activities Related to Child Abuse and Neglect

AUTHORITY: Sec. 6(a), 88 Stat. 7 (Sec. 6(a), Pub. L. 93-247); Sec. 7, 88 Stat. 8 (Sec. 7, Pub. L. 93-247).

SOURCE: 41 FR 54763, Dec. 15, 1976, unless otherwise noted.

§ 1340.4-1 Purposes.

(a) There are a number of Federal agencies which expend Federal funds to administer or assist programs and activities related to child abuse and neglect.

(b) The purposes of this subpart are:

(1) To ensure effective coordination among programs and activities related to child abuse and neglect under the Act and other such programs and activities administered and assisted by other Federal agencies, as required by Section 7 of the Act;

(2) To achieve the most effective and efficient utilization of Federal resources in the design, development, implementation and management of programs and activities related to the prevention, identification or treatment of child abuse and neglect;

(3) To ensure that programs and activities are not undertaken in a unilateral manner;

(4) To ensure that programs and activities are not duplicative; and,

(5) To provide that the results, outcomes, or data generated by programs and activities are made known and available to each of the agencies participating.

(c) In order to accomplish these purposes, it is necessary that there be established and maintained an ongoing effort among the participating agencies to clarify their respective roles; identify and centrally maintain information about their respective efforts; establish and maintain appropriate program interaction; and, achieve the maximum feasible level of synchronization of effort.

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[1] Part 220 was redesignated as Part 1392 at 45 FR 56691, Aug. 25, 1980.

(d) It is not the purpose of this subpart to alter in any manner the basic responsibility of an agency to administer and manage its programs and activities.

§ 1340.4-2 Definitions.

For purposes of this subpart.

(a) "Advisory Board" means the Advisory Board on Child Abuse and Neglect, established by the Secretary under the Act.

(b) "Executive Secretariat" means the National Center on Child Abuse and Neglect in its performance of the supportive administrative functions of the Advisory Board.

(c) "Assistant Secretary" means the Assistant Secretary for Human Development of the Department of Health and Human Services.

(d) "Activities" (and in the singular, "activity" as indicated by the context) means programs and activities related to child abuse and neglect administered or assisted by participating agencies, including but not limited to:

(1) Grants in aid;

(2) Grants for research and demonstration projects;

(3) Contracts conduct activities related to child abuse and neglect;

(4) Development of training curricula and supporting educational materials;

(5) Provision of technical assistance;

(6) Provision of services;

(7) Data collection;

(8) Development of program standards;

(9) Development of short and long range plans;

(10) Development of rules, regulations, policies or procedures.

(e) "Participating agencies" means the various Federal agencies with responsibilities for activities related to child abuse and neglect which by virtue of such responsibilities are, or are eligible to be, represented on the Advisory Board.

§ 1340.4-3 Reports and Materials.

Each participating agency shall, as a minimum, provide the following reports and material regarding its activities at the central and regional office levels to the Advisory Board:

(a) An annual written report on long range plans and budget projections;

(b) An annual written report on contemplated activities and budget projections for the succeeding fiscal year with a specific description of what those activities are to achieve and how they relate to existing activities;

(c) An annual written report at the conclusion of each fiscal year on the results and accomplishments of activities conducted during that year and a recapitulation of funds expended;

(d) Interim reports on activities which appear to warrant consideration or some coordinating action by the Advisory Board prior to the submission of annual reports;

(e) Draft copies of statements of work for contracts or grants, for information, review, and coordination;

(f) Final copies of statements of work referred to in paragraph (e) of this section, provided at the time of issuance;

(g) Brief statements of the subject matter, methodology, and objectives of unannounced or solicited activities approved for funding, at the time of award;

(h) Draft regulations or other requirements, guidelines, and standards for activities provided in timely fashion for review and coordination; and,

(i) Final copies of the materials referred to in paragraph (h) of this section, at the time of issuance.

§ 1340.4-4 Coordination Process.

(a) The Advisory Board shall be informed of all the planned activities reported to it pursuant to § 1340.4-3, in the context of the total Federal effort at both central and regional office levels.

(b) If the Advisory Board finds that the planned activities appear to represent an inappropriate duplication or overlap of efforts with another participating agency or that more effective coordination can be achieved, the Advisory Board, through Assistant Secretary for Human Development, shall bring such matter and its recommendations to the attention of the agencies involved. Those agencies shall expeditiously develop and report to the Advisory Board how they propose to coordinate their activities as well as a timetable for the actions proposed. In the event that there is an urgency for the rapid resolution of the problem, the Board shall set a deadline for the resolution of the problem.

(c) The Board shall report to the Secretary on a regular basis if there are inappropriate duplications or overlap of efforts in planned activities.

(d) Participating agencies shall encourage their regional office representatives to undertake joint planning and coordination of activities in their regions within the framework of national coordination under the Advisory Board, through such means as interagency committees and agreements.

SUBCHAPTER F—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, YOUTH SERVICES PROGRAMS

PART 1351—RUNAWAY YOUTH PROGRAM

Subpart A—Definition of Terms

Sec.
1351.1 Significant Terms.

Subpart B—Runaway Youth Program Grant

1351.10 What is the purpose of the Runaway Youth Program grant?
1351.11 Who is eligible to apply for a Runaway Youth Program grant?
1351.12 Who gets priority for the award of a Runaway Youth Program grant?
1351.13 What are the Federal and non-Federal participation requirements under a Runaway Youth Program grant?
1351.14 What is the period for which a grant will be awarded?
1351.15 What costs are supportable under a Runaway Youth Program grant?
1351.16 What costs are not allowable under a Runaway Youth Program grant?
1351.17 How is application made for a Runaway Youth Program grant?
1351.18 What criteria has HHS established for deciding which Runaway Youth Program grant applications to fund?
1351.19 What additional information should an applicant or grantee have about a Runaway Youth Program grant?

Subpart C—Additional Requirements

1351.20 What are the additional requirements under a Runaway Youth Program grant?

AUTHORITY: 91 Stat. 1058 (42 U.S.C. 5711).

SOURCE: 43 FR 55635, Nov. 28, 1978, unless otherwise noted.

Subpart A—Definition of Terms

§ 1351.1 Significant terms.

For the purposes of this part:

(a) "Aftercare services" means the provision of services to runaway or otherwise homeless youth and their families, following the youth's return home or placement in alternative living arrangements which assist in alleviating the problems that contributed to his or her running away or being homeless.

(b) "Area" means a specific neighborhood or section of the locality in which the runaway youth project is or will be located.

(c) "Coordinated networks of agencies" means an association of two or more nonprofit private agencies, whose purpose is to develop or strengthen services to runaway or otherwise homeless youth and their families.

(d) "Counseling services" means the provision of guidance, support and advice to runaway or otherwise homeless youth and their families designed to alleviate the problems which contributed to the youth's running away or being homeless, resolve intrafamily problems, to reunite such youth with their families, whenever appropriate, and to help them decide upon a future course of action.

(e) "Demonstrably frequented by or reachable" means located in an area in which runaway or otherwise homeless youth congregate or an area accessible to such youth by public transportation or by the provision of transportation by the runaway youth project itself.

(f) "Homeless youth" means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care.

(g) "Juvenile justice system" means agencies such as, but not limited to juvenile courts, law enforcement, probation, parole, correctional institutions, training schools, and detention facilities.

(h) "Law enforcement structure" means any police activity or agency with legal responsibility for enforcing a criminal code including, police departments and sheriffs offices.

(i) "A locality" is a unit of general government—for example, a city, county, township, town, parish, village, or a combination of such units. Federally recognized Indian tribes are eligible to apply for grants as local units of government.

(j) "A nonprofit private agency" is any agency, organization, or institution whose net earnings do not benefit any private shareholder, governing board member, or individual and which agrees to be legally responsible for the operation of a runaway youth project. It may include agencies which are fully controlled by private boards or persons. Non-Federally recognized Indian tribes and Indian organizations are eligible to apply for grants as nonprofit private agencies.

(k) "Runaway youth project" means a locally controlled human service program facility outside the law enforcement structure and the juvenile justice system providing temporary shelter, either directly or through other facilities, counseling and aftercare services to runaway or otherwise homeless youth.

(l) "Runaway youth" means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian.

(m) "Short-term training" means the provision of local, State, or regionally based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

(n) "A State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(o) "Technical assistance" means the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

(p) "Temporary shelter" means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services, on a 24-hour basis, by a runaway youth project.

Subpart B—Runaway Youth Program Grant

§ 1351.10 What is the purpose of the Runaway Youth Program grant?

The purpose of the Runaway Youth Program grant is to establish or strengthen existing or proposed community-based runaway youth projects to provide temporary shelter and care to runaway or otherwise homeless youth who are in need of temporary shelter, counseling and aftercare services. The Department is concerned about the increasing numbers of youth who leave, and stay away from, their homes without permission of their parents or legal guardian. There is also national concern about runaway youth who have no resources, who live on the street, and who represent law enforcement problems in the communities to which they run. The problems of runaway or otherwise homeless youth should not be the responsibility of already overburdened police departments and juvenile justice authorities. Rather, Congress intends that the responsibility for locating, assisting, and returning such youth should be placed with low-cost, community-based human service programs.

§ 1351.11 Who is eligible to apply for a Runaway Youth Program grant?

(a) States, localities, nonprofit private agencies and coordinated networks of private nonprofit agencies are eligible to apply for a Runaway Youth Program grant unless they are part of the law enforcement structure or the juvenile justice system.

§ 1351.12 Who gets priority for the award of a Runaway Youth Program grant?

In making Runaway Youth Program grants, HHS gives priority to those private agencies which have had past experience in dealing with runaway or otherwise homeless youth. HHS also gives priority to applicants whose total grant requests for services to runaway or otherwise homeless youth are less than $100,000 and whose project budgets, considering all funding sources, are smaller than $150,000. Past experience means that a major activity of the agency has been the provision of temporary shelter, counseling, and referral services to runaway or otherwise homeless youth and their families, either directly or through linkages established with other community agencies.

§ 1351.13 What are the Federal and non-Federal Financial Participation requirements under a Runaway Youth Program grant?

HHS will pay 90 percent of the costs of operating a runaway youth project for any fiscal year. Grantees must pay 10 percent of the costs of operating a runaway youth project for any fiscal year.

§ 1351.14 What is the period for which a grant will be awarded?

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed three years.

(b) Generally the grant will initially be for one year. A grantee must submit a separate application to have the support continued for each subsequent year. Continuation awards within the project period will be made provided the grantee has made satisfactory progress, funds are available, and HHS determines that continued funding is in the best interest of the Government.

§ 1351.15 What costs are supportable under a Runaway Youth Program grant?

Costs which can be supported include, but are not limited to, temporary shelter, referral services, counseling services, aftercare services, and staff training. Costs for acquisition and renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need.

§ 1351.16 What costs are not allowable under a Runaway Youth Program grant?

A Runaway Youth Progam grant does not cover the cost of constructing new facilities.

§ 1351.17 How is application made for a Runaway Youth Program grant?

HHS publishes annually in the FEDERAL REGISTER a program announcement of grant funds available under the Runaway Youth Program Act. The program announcement states the amount of funds available, program priorities for funding, and criteria for evaluating applications in awarding grants. The announcement also describes specific procedures for receipt and review of applications. An applicant should:

(a) Obtain a program announcement from the FEDERAL REGISTER or from one of HHS's 10 Regional Offices in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle;

(b) Obtain an application package from one of HHS's Regional Offices; and

(c) Upon fulfillent of the requirements of OMB-Circular A-95 which can also be obtained at one of HHS's Regional Offices, submit a completed application to the Grants Management Office at the appropriate Regional Office.

§ 1351.18 What criteria has HHS established for deciding which Runaway Youth Program grant applications to fund?

In reviewing applications for a Runaway Youth Program grant, HHS takes into consideration a number of factors, including:

(a) Whether the application meets one or more of the program's funding priorities; (see § 1351.12)

(b) The need for Federal support based on the number of runaway or otherwise homeless youth in the area in which the runaway youth project is or will be located;

(c) The availability of services to runaway or otherwise homeless youth in the area in which the runaway youth project is located;

(d) Whether there is a minimum residential capacity of four and a maximum residential capacity not to exceed 20 youth with a ratio of staff to youth sufficient to assure adequate supervision and treatment;

(e) Plans for meeting the best interests of the youth involving, when possible, both the youth and the parent or legal guardian. These must include contacts with parents or legal guardian. This contact should be made within 24 hours, but must be made no more than 72 hours following the time of the youth's admission into the runaway youth project. The plans must also include assuring the youth's safe return home or to local government officials or law enforcement officials and indicate efforts to provide appropriate alternative living arrangements.

(f) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their parents or legal guardians;

(g) Whether the estimated cost to the Department for the runaway youth project is reasonable considering the anticipated results;

(h) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations.

§ 1351.19 What additional information should an applicant or grantee have about a Runaway Youth Program grant?

(a) Several other HHS rules and regulations apply to applicants for or recipients of Runaway Youth Program grants. These include:

(1) The provisions of 45 CFR Part 74 pertaining to the Administration of Grants;

(2) The provisions of 45 CFR Part 16, Departmental Grants Appeal Process, and the provisions of Informal Grant Appeal Procedures (Indirect Costs) in volume 45 CFR Part 75;

(3) The provisions of 45 CFR Part 80 and 45 CFR Part 81 pertaining to nondiscrimination under programs receiving Federal assistance, and hearing procedures;

(4) The provisions of 45 CFR Part 84 pertaining to discrimination on the basis of handicap;

(5) The provisions of 45 CFR Part 46 pertaining to protection of human subjects.

(b) Several program policies regarding confidentiality of information, treatment, conflict of interest and State protection apply to recipients of Runaway Youth Program grants. These include:

(1) *Confidential information.* All information including lists of names, addresses, photographs, and records of evaluation of individuals served by a runaway youth project shall be confidential and shall not be disclosed or transferred to any individual or to any public or private agency without written consent of the youth and parent or legal guardian. Youth served by a runaway youth project shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records. Procedures shall be established for the training of project staff in the protection of these rights and for the secure storage of records.

(2) *Medical, psychiatric or psychological treatment.* No youth shall be subject to medical, psychiatric or psychological treatment without the consent of the youth and parent or legal guardian unless otherwise permitted by State law.

(3) *Conflict of interest.* Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(4) *State law protection.* HHS policies regarding confidential information and experimentation and treatment shall not apply if HHS finds that State law is more protective of the rights of runaway or otherwise homeless youth.

(c) Nothing in the Runaway Youth Act or these regulations gives the Federal Government control over the staffing and personnel decisions regarding individuals hired by a runaway youth project receiving Federal funds.

Subpart C—Additional Requirements

§ 1351.20 What are the additional requirements under a Runaway Youth Program grant?

(a) To improve the administration of the Runaway Youth Program by increasing the capability of the runaway youth service providers to deliver services, HHS will require grantees to accept technical assistance and short-term training as a condition of funding for each budget period.

(1) Technical assistance may be provided in, but not limited to, such areas as:

- Program Management,
- Fiscal Management,
- Development of coordinated networks of private nonprofit agencies to provide services, and
- Low cost community alternatives for runaway or otherwise homeless youth.

(2) Short-term training may be provided in, but not limited to, such areas as:

- Shelter facility staff development,
- Aftercare services or counseling,
- Fund raising techniques,
- Youth and Family counseling, and
- Crisis intervention techniques.

(b) Grantees will be required to coordinate their activities with the 24-hour National toll-free communication system which links runaway youth projects and other service providers with runaway or otherwise homeless youth.

(c) Grantees will also be required to submit statistical reports profiling the clients served. The statistical reporting requirements are mandated by the Act which states that "runaway youth projects shall keep adequate statistical records profiling the children and parents which it serves . . ."

SUBCHAPTER G—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, CHILD, WELFARE SERVICES PROGRAM—[RESERVED]

SUBCHAPTER H—[RESERVED]

SUBCHAPTER I—THE ADMINISTRATION FOR HANDICAPPED INDIVIDUALS, DEVELOPMENTAL DISABILITIES PROGRAM

PART 1385—GENERAL

Sec.
1385.1 Purpose of Act.
1385.2 Terms.
1385.3 Grants administrative requirements.
1385.4 Judicial review.
1385.5 State control of operations.
1385.6 Employment of handicapped individuals.
1385.7 Recovery.
1385.8 Good cause for other use of facility.
1385.9 Cooperative or joint effort between States and agencies.
1385.10 Awards.
1385.11 Assurances regarding evaluation system.

AUTHORITY: Pub. L. 91-517; Pub. L. 94-103.

SOURCE: 42 FR 5276, Jan. 27, 1977, unless otherwise noted.

§ 1385.1 Purpose of Act.

The purpose of the Act is to improve and coordinate the provision of services to persons with developmental disabilities and to establish a system for the protection and advocacy of rights for persons with developmental disabilities through:

(a) Grants to assist the States in developing and implementing a comprehensive and continuing plan for identifying and meeting the needs of the developmentally disabled;

(b) Support of activities which contribute to improving the condition of persons with developmental disabilities;

(c) Renovation and modernization of university affiliated facilities which demonstrate the provision of services for the demonstration and interdisciplinary training programs in university affiliated facilities;

(d) Training specialized personnel needed for providing such services;

(e) Provision of technical assistance in the establishment of services and facilities for the developmentally disabled; and

(f) Development and demonstration of new and improved techniques for providing such services.

To these ends, Federal financial assistance is available through (1) basic support formula grants to States; (2) formula grants to States for effecting a system to protect and advocate the rights of developmentally disabled persons; (3) grants to university affiliated facilities and for satellite centers; and (4) grants to public and private nonprofit groups for demonstration projects and projects of national significance.

§ 1385.2 Terms.

(a) For purposes of Parts 1386 and 1387, the terms below are defined as follows:

(1) "Act" means the Developmental Disabilities Services and Facilities Construction Act, as amended by the Developmentally Disabled Assistance and Bill of Rights Act;

(2) "Construction" means (i) the construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, (ii) initial equipment for such buildings including medical and other transportation facilities, and (iii) architect's fees in connection with an approved project. Construction does not include the cost of offsite improvements or the cost of the acquisition of land;

(3) "Costs of administration and operation," for purposes of Part 1387 of this chapter, means those administrative and operating costs of university affiliated facilities which are necessary to support interdisciplinary training programs and demonstration facilities providing services to developmentally disabled persons. Eligible costs shall be specified in guidelines to be issued by the Secretary;

(4) "Cost of construction" means the amount found by the Secretary to be necessary for the construction of a project, approved under Parts 1386 and 1387 of this chapter;

(5) "Demonstration" means, for the purposes of Part 1387 of this chapter, (i) a pilot study or experimental at-

tempt to provide more and better services than are available, for the purpose of testing or establishing standards or methods of service that are practicable and effective for general application in the developmental disabilities program; (ii) provision of a special type of service in order to test its value and to provide information on costs, methods of administration, methods of providing services, or techniques; or (iii) application in new settings of the results derived from previous research or practice for the purpose of determining the effectiveness of new procedures;

(6) "Developmental disability" means a disability of a person which (i) is attributable to mental retardation, cerebral palsy, epilepsy, or autism; (ii) is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or (iii) is attributable to dyslexia resulting from a disability described in paragraph (a) (i) or (ii); (iv) originates before such person attains age eighteen; (v) has continued or can be expected to continue indefinitely; and (vi) constitutes a substantial handicap to such person's ability to function normally in society;

(7) "Director" means the Director of the Developmental Disabilities Office, Office of Human Development.

(8) "Equipment," for the purposes of construction under Parts 1386 and 1387 of this Chapter, means those items which are necessary for the initial operation of the facility, but does not include supplies such as food, fuel, drugs, and paper;

(9) "Exemplary services" means those specialized services, including adaptation of generic services, for the diagnosis, treatment, education, training, habilitation, and care of persons with developmental disabilities, conducted in or in conjunction with a university affiliated facility (or satellite) for purposes of demonstration or training, which are of replicable high quality;

(10) "Facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities;

(11) "Interdisciplinary training" means an integrated educational program utilized reciprocally by two or more disciplines each of which is knowledgeable about or possesses, in relationship to common fields of endeavor, a basic language, a core body of knowledge, certain relevant skills, and an understanding of the attitudes, values, and methods of partcipating disciplnes. Interdisciplinary training includes training with practicums which enhance the skills of the trainee in collaboration with or complementing the services rendered by members of other disciplines;

(12) "National Advisory Council" means the National Advisory Council on Services and Facilities for the Developmentally Disabled;

(13) "Nonprofit facility for persons with developmental disabilities" and "nonprofit private institution of higher learning" mean, respectively, a facility for persons with developmental disabilities and an institution of higher learning which are owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and the term "nonprofit private agency or organization" means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations;

(14) "Population" as applied to any State means the population of that State as determined by the most recent official estimates by the U.S. Department of Commerce made available to the Secretary;

(15) "Project period" means the period of time, not exceeding three years, for which a project is approved for grant support with Federal funds. Such period may be extended by the Secretary beyond three years for a period not to exceed twelve months, and with or without additional fund-

ing, in order to permit continuation or completion of the same approved project. The approval and support of a project for the maximum project period shall not preclude additional support of that project beyond such period if such support of the continued project is requested, evaluated, and approved on the same basis as a new or initial application in accordance with § 1387.22 of this chapter;

(16) "Projects of national significance" means projects (i) designed to have a direct impact on developmental disabilities programs throughout the country; or (ii) having an objective or objectives which if achieved could be replicated or result in an improved delivery system for developmental disabilities services or affect national policies or standards; or (iii) involving activities to be conducted in a number of sites in various parts of the country as part of a unified program;

(17) "Public agency" means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing, including State institutions of higher education and hospitals, or any Indian tribal government;

(18) "Satellite center" means an entity which is associated with one or more university affiliated facilities and which functions as a community or regional extension of such university affiliated facilities in the delivery of training, services, and programs to the developmentally disabled and their families, to personnel of State agencies concerned with developmental disabilities, and to others responsible for the care of persons with developmental disabilities;

(19) "Secretary" means the Secretary of Health and Human Services, or a designee;

(20) "Services for persons with developmental disabilities" means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability. Such services include: Diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with a developmental disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons of all ages with developmental disabilities;

(21) "State" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands;

(22) "State agency(ies)" except for the purpose of Part 1386, Subpart C means the State agency or agencies designated in the State plan to administer or supervise the administration of all or designated portions of the State plan;

(23) "State agency for construction" means the sole State agency designated to administer or supervise the administration of grants for construction of facilities for the developmentally disabled under the State plan;

(24) "State plan" means the document or documents submitted by the State to comply with the requirements for participation under Parts 1386 and 1387 of this chapter;

(25) "State planning council" (referred to alternately as "State council" or "council") means that body, the members of which are appointed by the Governor, which is responsible for supervising the development of comprehensive planning for persons with developmental disabilities, monitoring of the plan, and evaluating its results, and which serves as an advocate for persons with developmental disabilities;

(26) "Substantial handicap" means a physical or mental disability or both of such severity that, alone or in connection with social, legal, or economic constraints, it requires the provision of specialized services over an extended period of time directed toward the individual's social, personal, physical, or economic habilitation or rehabilitation;

(27) "Technical assistance" means the furnishing of consultative, technical, and informational services to

States, local or other public or private agencies, organizations, or individuals in matters pertaining to planning, provision of services, construction of facilities, and the organization and management of facilities and programs for developmentally disabled persons;

(28) "Title" (except when it refers to the Code of Federal Regulations) means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project;

(29) "University affiliated facility" means a public or other non-profit facility which is associated with, or is an integral of, a college or university, which aids in demonstrating the provision of specialized services for the diagnosis and treatment of persons with developmental disabilities, and which provides education and training (including interdisciplinary training) of personnel needed to render services to persons with developmental disabilities;

(30) "Urban or rural poverty area" means a census tract, census country division, or minor civil division, as applicable, in which a percentage (which is at least the percentage determined in accordance with the following sentence) of the residents have incomes below the poverty level, as defined by the Secretary of Commerce. The percentage referred to in the preceding sentence shall be derived so that the total population of such areas as a percent of the population of the United States is equal to the total population of the United States with incomes below such poverty level, as a percent of the total population of the United States, plus five percent.

(31) "Volunteer" means a person who provides a service on a non-paid basis, except for reimbursement of actual expenses, and who works in concert with other services toward shared objectives on an individual or group assignment.

§ 1385.3 Grants administrative requirements.

(a) The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles for grants to State and local governments, shall apply to all grants funded under Parts 1386 and 1387 of this chapter.

(b) Attention is called to the applicability, as cited therein, of the provisions of the following parts of Title 45 CFR to grants funded under Parts 1386 and 1387 of this chapter:

45 CFR Part 16—Department Grant Appeals Process

45 CFR Part 46—Protection of Human Subjects

45 CFR Part 75—Informal Grant Appeals Procedures, Subpart A—Indirect Cost Appeals

45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of Title VI of Civil Rights Act of 1964

45 CFR Part 81—Practice and Procedure for Hearings under Part 80 of this Title.

(c) Each recipient of assistance under these Parts shall keep records (1) which fully disclose (i) the amount and disposition by such recipient of the proceeds of such assistance, (ii) the total cost of the project or undertaking in connection with which such assistance is given or used, and (iii) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (2) such other records as will facilitate an effective audit.

§ 1385.4 Judicial review.

If any State is dissatisfied with the Secretary's action under § 1386.2 or § 1386.15 such State may appeal to the United States Court of Appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action, in accordance with 42 U.S.C. 2694.

§ 1385.5 State control of operations.

Except as otherwise specifically provided, nothing in Parts 1386 and 1387 of this chapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for persons with developmental disabilities with respect to which any funds have been or may be expended under these parts.

§ 1385.6 Employment of handicapped individuals.

As a condition for the receipt of financial assistance under Parts 1386 and 1387 of this chapter each recipient of such assistance shall take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals by the provisions of sections 503 and 504 of the Rehabilitation Act of 1973 which govern employment (a) by State rehabilitation agencies and rehabilitation facilities, and (b) under Federal contracts and subcontracts.

§ 1385.7 Recovery.

The State council shall promptly notify the Secretary in writing if, any time within 20 years after the completion of construction, any facility which received funds under Part 1386, Subpart A and Part 1387, Subpart A of this chapter (a) is sold or transferred to any person, agency, or organization not qualified to file an application under the Act or not approved as a transferee by the State agency; or (b) ceases to be a public or other nonprofit facility for persons with developmental disabilities. Unless there is good cause, in conformance with § 1385.8, for releasing the applicant or other owner from obligation to continue such facility as a facility for developmentally disabled persons, the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment.

§ 1385.8 Good cause for other use of facility.

If, within 20 years after completion of any construction for which a construction grant under the Act has been made, the facility shall cease to be a public or nonprofit facility for persons with developmental disabilities, the Secretary in determining whether there is good cause for releasing the applicant or other owner of the facility from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities, shall take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to use for another public purpose which will promote the purposes of the Act; or

(b) There are reasonable assurances that for the remainder of the 20 year period other facilities not previously utilized for the care of persons with developmental disabilities will be so utilized and are substantially equivalent in nature and extent for such purposes.

§ 1385.9 Cooperative or joint effort between States and agencies.

An application providing for participating in a joint effort between States or among public or private agencies, or by any combination of such entities, shall be in accordance with the agreements in writing between the entities involved.

§ 1385.10 Awards.

All awards under Parts 1386 and 1387 of this chapter shall be in writing and shall set forth the amount awarded. Awards under Part 1387 of this chapter shall also specify the project period for which support is contemplated.

(a) Federal financial participation shall be available under Parts 1386 and 1387 of this chapter only for those activities approved in the grant award and only in the total amount approved in the award.

(b) Under Part 1386, Subpart A of this chapter, Federal financial participation may be available in expenditures made under the State plan including expenditures for the State council and the administration of the State plan, in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies. The cost of acquiring land for a construction project under Parts 1386 and 1387 is not eligible for Federal financial participation. As a condition for Federal financial participation, the annual revision of the State plan and other required reports must be submitted by the State planning council and approved by the Secretary.

§ 1385.11 Assurances regarding evaluation system.

(a) Within six months after the development by the Secretary of an evaluation system in accordance with the Act, as a condition to the receipt of Federal financial assistance under Parts 1386 and 1387 of this chapter, each State shall submit to the Secretary a proposal for a time-phased method of implementing the system. Proposals shall be submitted in the form and at the time set forth in guidelines which will be issued by the Secretary.

(b) Within two years after the date of the development of such a system, each State shall provide assurances satisfactory to the Secretary that the State is using such a system.

PART 1386—FORMULA GRANT PROGRAMS

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SOURCE: 42 FR 5279, Jan. 27, 1977, unless otherwise noted.

Subpart A—The State Plan

GENERAL

§ 1386.1 Purpose and assurances.

(a) *General.* Any State wishing to take advantage of Federal financial assistance under this Subpart must have a State plan approved annually by the Secretary.

(b) *Form and content.* The State plan, which is to be prepared by the designated State agency(ies) in accordance with supervision provided by the State Council, shall contain, in the form prescribed by the Secretary, a specific description of the State's program, the plans and policies to be followed in carrying out the program, a description of the planning process as developed by the State council and utilized in developing the program, and such other information as prescribed by the Secretary. Basic principles for the planning processes and suggested alternative models will be described in guidelines issued by the Secretary. The State plan shall consist of the following parts which shall be amended, reaffirmed, or updated annually as applicable:

(1) A part setting forth data necessary to comply with assurances required in the Act, and all regulations, policies, and procedures which shall be established by the Secretary;

(2) A part which describes the State goals, annual objectives to achieve the goals, priorities, evaluation methods, and the rationale for annual changes;

(3) A part containing measurable objectives and strategies (i) to reduce and eventually eliminate inappropriate institutional placement of people with developmental disabilities; and (ii) to improve the quality of care and state of surroundings of persons for whom institutional care is appropriate;

(4) A part containing a design for implementation of the plan as set forth in § 1386.50; and

(5) A part containing the following assurances: (i) Authority of the State agency(ies): The State plan shall certify that the State agency(ies) has authority to administer or supervise the administration of all or portions of the State plan, and that nothing in the State plan is inconsistent with State law;

(ii) Funds made available to other agencies: (A) Part of the funds paid to the State will be made available to other public agencies or other nonprofit private agencies, institutions, and organizations for the purposes of carrying out the Act; (B) such funds shall be expended in accordance with State procedures and standards and in accordance with the requirements contained in these regulations and policies established by the Secretary;

(iii) State participation in carrying out the State plan: That there will be reasonable State financial participation in the cost of carrying out the State plan. Reasonable State participation shall include evidence of the following: (A) that there is an organizational unit responsible for program administration; (B) that adequate staff is available for administration of the plan; and (C) that State appropriated funds will be used in part to support the activities included under the State plan;

(iv) Anticipated contribution toward strengthening services: That the funds paid to the State will be used to make significant contribution toward strengthening services for persons with developmental disabilities in the various political subdivisions of the State, in order to improve the quality, extent, and scope of services.

(v) Maintenance of effort: That funds paid the State under the State plan will be used to supplement and, to the extent practicable, increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided, and not to supplant such non-Federal funds. Compliance with such assurance will be deemed to have been met if the aggregate level of State, local, and private non-profit funds available in the State for activities supported under the approved State plan is at least no lower for any fiscal year than it was for the immediately preceding fiscal year as reported in required financial reports, provided that the Secretary may also take into consideration the extent to which the level of such funds for any fiscal year may have included emergency or other funds for an activity of a non-recurring nature;

(vi) Human rights and welfare of individuals receiving services: That the human rights of all persons (especially those without familial protection) receiving services under Parts 1386 and 1387 of this chapter will be protected;

(vii) Services for persons unable to pay: That a reasonable volume of services will be furnished to persons unable to pay therefor. As used in this section, "persons unable to pay therefor" includes persons who are otherwise self-supporting but are unable to pay the full cost of needed services. Such services may be paid for wholly or partly out of public funds or contributions of individuals and private and charitable organizations, or may be contributed at the expense of the provider of services itself. In determining what constitutes a reasonable volume of services to persons unable to pay therefor, there shall be considered the amount of services that may be available through generic agencies. The requirements may be waived if it is demonstrated to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that to furnish such services is not feasible financially;

(viii) Financial support for facilities: That adequate financial support will be available to complete the construction of, and to maintain and operate the facility when such construction is completed. Compliance with this assurance may be made by a showing from the grantee that adequate funds are or will be on deposit in a bank, or that program income from services provided is or will be adequate, or that State and local funds will be made available for maintenance and operation upon completion of construction;

(ix) Payment of construction workers: That all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project assisted with funds under this subpart and Subpart A, Part 1387 of this Chapter will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a-276a-5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c); and

(x) Compliance with assurance for habilitation plans for developmentally disabled persons: Each State receiving an allotment under this Subpart after September 30, 1976, shall satisfactorily assure the Secretary that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this Subpart has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan and that such plans are reviewed annually.

(6) A part containing those requirements in §§ 1386.20 through 1386.49.

§ 1386.2 Plan submission and approval.

(a) The State plan (and its annual revisions) shall be submitted by the chairperson of the State council to the Secretary 60 days prior to the fiscal year for which the plan is applicable.

(b) Failure to submit an approvable plan or annual revision prior to the fiscal year for which the plan is applicable shall result in the loss of Federal financial participation in the cost of expenditures during the period of the fiscal year for which an approvable plan or annual or other revision has not been submitted.

(c) Any State plan, amendment, or revision meeting the requirements of the Act, this Subpart, and performance standards to be issued by the Secretary shall be approved.

(d) Final disapproval of any State plan or annual or other revision shall be determined by the Secretary; except that no State plan or any revision thereof shall be finally disapproved until after the State has been given reasonable notice and opportunity for a hearing in accordance with Subpart D of this part.

(e) In accordance with the Office of Management and Budget Circular A-95, the Governor shall be given an opportunity to review and comment on the State plan, plan amendments, and related material, except for periodic statistical, or budget, and other fiscal reports. The Office of the Governor shall have 45 days to review such plan material prior to its submission to the Secretary. Any comments made shall be transmitted to the Department with the documents.

§ 1386.3 Designation of State agency(ies) for administration.

(a) The State plan shall name the designated State agency(ies) which shall administer all or designated portions of the State plan: *Provided,* That a sole State agency is to be designated for administering or supervising the administration of grants for construction.

(b) If the State plan designates more than one State agency to administer the State plan, it shall set forth the portion of the program for which each State agency is responsible.

(c) The State may apportion its allotment among such agencies in proportion to the responsibilities assigned to such agencies for carrying out activities approved under the State plan. Funds so apportioned may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purpose of the State plan will receive proportionate benefit from the combination.

§ 1386.4 Identification of administrative program unit.

The State plan shall provide for and identify a program unit within the designated State administering agency, which has primary responsibility for proper and efficient administration of the State plan.

ALLOTMENTS, FEDERAL SHARE, AND PAYMENTS

§ 1386.10 Allotments to States.

The allotment to the several States shall be computed by the following formula:

(a) Two-thirds on the basis of total population weighted by financial need determined by the relative per capita income as shown by data supplied by the U.S. Department of Commerce for the three most recent consecutive years for which satisfactory data are available.

(b) One-third on the basis of a need factor based on the ratio of beneficiaries in the State receiving benefits under the Adult Disabled Child Program (section 202(d)(1)(B)(ii) of the Social Security Act) related to population of the State age 18-65 as bearing on the national total of such population weighted by the total population of the State.

(c) For the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, the allotment in any fiscal year beginning July 1, 1975, shall not be less than $50,000. The allotment of each other State in any fiscal year shall not be less than the greater of $150,000, or the amount of the allotment received by the State for the fiscal year ending June 30, 1974.

(d) If the amount appropriated for State allotments for any fiscal year exceeds $50,000,000, the minimum allotment of a State for such fiscal year shall be increased by an amount which bears the same ratio to the amount determined for such State as the difference between the amount so appropriated and the amount authorized to be appropriated for such fiscal year bears to $50,000,000.

§ 1386.11 Reallotment of funds.

The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as may be fixed (but not earlier than thirty days after notice has been published of the Secretary's intention to make such reallotment in the FEDERAL REGISTER), to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

§ 1386.12 Conditions on uses of allotments.

(a) For the fiscal year ending June 30, 1976, not less than 10 per centum of each State's allotment shall be expended for the purpose of assisting in developing and implementing plans designed to eliminate inappropriate placement in institutions of persons with developmental disabilities. For each succeeding fiscal year, 30 per centum of the State's allotment shall be used for these purposes.

(b) Designation of allotment for construction. The State plan shall specify the per centum of the State's allotment in any fiscal year which is to be devoted to construction of facilities. Such per centum shall be not more than 10 per centum of the State's allotment or such lesser per centum as the Secretary may from time to time prescribe.

(c) Sums allotted to a State in a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose in the next fiscal year (and in such year only), in addition to the sums allotted to such State in such next fiscal year; except that if the maximum amount which may be specified for construction for a year plus any part of the amount so specified pursuant to such section for the preceding fiscal year and remaining unobligated at the end of such fiscal year is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State, the amount specified for such preceding year shall remain available for a second additional year for the purpose of paying the Federal share of the cost of construction of such facility.

(d) Expenditures for proper and efficient administration of the State plan. (1) At the request of the State, a portion of the State's allotment shall be made available by the Secretary to pay not more than one-half of the expenditures described in this paragraph for proper and efficient administration of the approved State plan: *Provided,* That not more than 5 per centum or $50,000, whichever is less, shall be available for this purpose. (2) Payments under this section shall be made only on the condition that expenditures from State appropriations for administration of the State plan shall not be less than State expenditures for the fiscal year ending June 30, 1975. (3) Costs identified in the approved State plan as necessary for the administration of the program shall not include costs applicable to provision of services, planning or construction.

§ 1386.13 Federal share.

(a) Except as provided for in paragraph (b) of this section, the Federal share for a State may not exceed 75 per centum of the expenditures incurred by the State under the State plan.

(b) In the case of any project, program, or activity located in an area within a State determined by the Secretary to be an urban or rural poverty area, the Federal share may not exceed 90 per centum of the expenditures incurred by the State under the State plan.

(c) The non-Federal share of any project, program, or activity assisted by a grant under this Subpart may be provided in kind.

(d) For the purpose of determining the Federal share with respect to any activity, program, or project described in the State plan, expenditures on that activity, program, or project by a political subdivision of a State or by a nonprofit private entity shall be deemed to be expenditures by such State, subject to the condition that such expenditures may be included only when made by a political subdivision or nonprofit private agency, organization, or group to which the State agency has made available funds from Federal or State sources for carrying out the approved State plan for the fiscal year.

§ 1386.14 Nonduplication.

In determining the amount of any State's Federal share of the expenditures incurred by it under its approved State plan, there shall be disregarded (a) any portion of such expenditures which are financed by Federal funds provided under any provision of the law other than this subpart, and (b) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds, except as otherwise provided by statute enacted subsequent to the effective date of Pub. L. 94-103, December 18, 1975.

§ 1386.15 Payments for planning, administration, services, and construction.

(a) From each State's allotment for a fiscal year under this subpart, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

(b)(1) Payments for construction projects shall be made upon certification by the designated State agency for construction that, based upon its inspection, work has been performed upon a project, or purchases have been made in accordance with plans and specifications approved by the State agency and payment of an installment is due. If the State is not authorized by law to make payments to the applicant, the payment shall be made directly to the applicant. Certification shall be submitted to the Secretary in such form and at such times as required. Final payment for a project shall be made only upon certification by the State agency authorized by State law and designated by the Governor to administer construction grants that appropriate, periodic, and final inspections have been made by appropriate authorities in the State and that all applicable construction standards and other applicable standards and codes have been met.

(2) If the Secretary, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring withholding of payments (§ 1386.16) payment may be withheld in whole or in part, pending corrective action or action based on

such hearing, after notice has been given to the designated State agency of opportunity for a hearing.

§ 1386.16 Withholding of payments.

(a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State council and the appropriate State agency(ies), finds that (1) there is a failure to comply substantially with any of the provisions required to be included in the State plan; (2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this Part, the Secretary shall notify such State council and agency(ies) that further payments will not be made to the State under this Subpart (or, in his discretion, that further payments will not be made to the State for activities in which there is such failure) until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no further payment under this Subpart to the State or shall limit further payment under this subpart to such State to activities in which there is no such failure.

(b) The State council shall review, at least annually, the State's plan (including the design for implementation) and the actions of the State for the purpose of determining if the State is complying with the requirements of the State plan and its design for implementation and shall notify the Secretary that it has made such a review. The State council may notify the Secretary of the findings of such review.

§ 1386.17 Standards for services and construction of facilities.

(a) Standards for services for persons with developmental disabilities. [Reserved].

(b) Standards for construction and equipment of facilities.

(1) *General.* (i) The standards set forth in this section shall apply to all projects receiving Federal assistance under Subpart A, Part 1386 and Subpart A, Part 1387 of this chapter for construction of new buildings, acquisition, modernization, expansion, remodeling, and alteration of existing buildings and initial equipment for such buildings.

(ii) The designated State agency for construction shall determine in writing the occupancy classification of the building under the Life Safety Code (National Fire Protection Association (NFPA) Bulletin No. 101) 1973 edition or such future revisions as may be approved by the Secretary, to ensure the capability of building occupants to respond in emergencies and for self-preservation.

(iii) The site location of any facility shall meet the criteria established by the State agency designated for construction, and comply with the Department's requirements with regard to the National Environmental Policy Act, Pub. L. 91-190, National Historical Preservation Act, Pub. L. 89-665, Coastal Zone Management Act, Pub. L. 92-583, and National Archeological Preservation Act, Pub. L. 93-291.

(2) *Design and construction of facilities.* (i) Project design and construction of facilities shall be done in accordance with one of the following model codes:

The Building Officials Conference of America—(BOCA).
The Uniform Building Code—(UBC).
The Southern Standard Building Code—(SSB).
The National Building Code—(NBC).

(ii) The codes listed below shall be used with respect to the following specific details:

Life safety: The National Fire Protection Association (NFPA), The Life Safety Code, Bulletin No. 101;
Air conditioning and ventilation systems: NFPA Standards, Nos. 90A or 90B;
Plumbing—National Standard Plumbing Code, (NAPHCC);
Electrical systems—National Electrical Code, NFPA Standard No. 70;
Elevators—American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, ASA-A17 1960.

(3) *Special details.* (i) All doors to toilet rooms and bathrooms shall be equipped with hardware that will permit access in an emergency.

(ii) All paint and applied finishes used in furniture and furnishing shall be free of lead or other materials which may be harmful if ingested by humans, in accordance with Pub. L.

94-317, the Lead-Based Paint Poisoning Prevention Act;

(4) *Equipment.* Initial equipment of the kind and in the quantity necessary shall be provided for the complete functioning of the facility.

(5) *Architectural Barriers.* The building to be constructed, renovated, or modernized will comply with revised standards of the American National Standards Institute, Inc., adopted pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151-4156.

(6) *Hazards—Relocation.* The application, facility, and the operation thereof shall comply, as appropriate, with the following:

(i) Uniform Relocation Assistance Act—Pub. L. 91-646.

(ii) Historic Sites—Pub. L. 89-665.

(iii) Flood Insurance—Pub. L. 93-234.

(iv) Flood Hazards—Executive Order 11296.

STATE PLAN REQUIREMENTS—METHODS OF ADMINISTRATION

§ 1386.20 Methods of administration.

The State plan shall provide for such strategies, policies, and procedures as are necessary for the proper and efficient administration of the State plan. It shall include methods of informing the general public in the State of the kinds and locations of services and facilities which are available under the State plan, and that the State plan is available to interested parties in the State for their information.

§ 1386.21 Personnel administration.

(a) The State plan shall provide that methods of personnel administration will be established and maintained (in the State agencies administering or supervising the administration of the program and in local agencies administering the program) in conformity with the standards for a Merit System of Personnel Administration, 45 CFR Part 70, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 modifying or superseding such standards.

(b) The State plan shall provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in 45 CFR 70.4, Equal employment opportunity. The affirmative action plan will provide for specific action steps and timetables to assure equal employment opportunity. This plan shall be made available for review upon request.

§ 1386.22 Fiscal administration.

The State plan shall provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this Subpart.

§ 1386.23 Special financial and technical assistance to poverty areas.

The State plan shall provide that special financial and technical assistance shall be given to areas of urban or rural poverty in providing services and facilities for persons with developmental disabilities who are residents of such areas.

§ 1386.24 Reports.

The State plan shall provide that the State agency will make such reports in such form and containing such information, and at such time, as the Secretary may require, and will comply with such provisions as he may find necessary to assure the correctness and verification of such reports. These reports include, but are not limited to, (a) the Developmental Disabilities Office's program performance report and (b) financial reports.

§ 1386.25 Methods of evaluation.

(a) The State plan shall describe the methods to be used to assess the effectiveness and accomplishments of the State in meeting the needs of persons with developmental disabilities in the State.

(b) The State plan shall provide for the implementation of an evaluation system in accordance with § 1385.11 of this chapter.

§ 1386.26 Use of volunteers.

The State plan shall provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Services Act of 1973 (87 Stat. 394), and other appropriate voluntary organizations. The use of such services shall supplement, but shall not be in lieu of, paid employees.

§ 1386.27 Protection of employees' interests.

The State plan shall provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions to carry out the plan described in § 1386.42 including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

§ 1386.28 Membership of State planning council.

The State plan shall contain a current listing of the members of the State council, their names, and the constituency, agency, or organization each represents.

§ 1386.29 Identification of State planning council staff.

The State plan shall (a) provide that the State council will be adequately staffed, consistent with its duties and responsibilities; (b) identify the staff assigned to the council; and (c) specify that the staff shall be responsible to the State council.

§ 1386.30 Review of all other State plans.

The State plan shall provide, to the maximum extent feasible, for an opportunity for prior review and comment by the State council of all State plans of the State which relate to programs affecting persons with developmental disabilities. The State council's responsibilities in obtaining timely access to these other State plans, and the council's recourse if the plans are not made available will be detailed in guidelines to be issued by the Secretary.

§ 1386.31 Review of State plan.

The State plan shall provide that the State council will from time to time, but not less often than annually, review and evaluate its State plan approved under this subpart and submit appropriate revisions to the Secretary.

PROVISION OF SERVICES AND CONSTRUCTION OF FACILITIES

§ 1386.40 Goals and objectives.

The State plan shall describe clearly defined long-range goals and measurable short-term objectives, with primary consideration given to §§ 1386.42 through 1386.45 and to goals which may be established by the Secretary.

§ 1386.41 Allocation of grant funds based on State priorities.

(a) The State plan shall set forth priorities, policies, and procedures for the allocation and expenditure of funds under the plan, based on the established goals and objectives.

(b) Special consideration shall be given to those activities (1) which are located in areas of urban or rural poverty, or (2) which provide services to the more severly handicapped persons.

(c) The State plan shall provide that high priority for approval shall be given to those activities that hold significant promise toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of individuals with such a disability.

§ 1386.42 Deinstitutionalization.

The State plan goals, objectives, and strategies shall address: (a) The elimination of inappropriate placement in institutions of persons with developmental disabilities, and (b) the improvement of the quality of care and the state of surroundings of persons who are appropriately placed in institutions.

§ 1386.43 Establishment of community program alternatives to institutionalization.

The State plan shall support the establishment of community programs as alternatives to institutionalization and support such programs designed to provide services for the care and habilitation of persons with developmental disabilities, and which utilize, to the maximum extent feasible, the resources and personnel in related community programs to assure full coordination with such programs and to assure the provision of appropriate supplemental health, educational, or social services for persons with developmental disabilities.

§ 1386.44 Early screening, diagnosis, and evaluation.

The State plan shall provide for early screening, diagnosis, and evaluation (including maternal care, developmental screening, home care, infant and preschool stimulation programs, and parent counseling and training) of developmentally disabled infants and preschool children, particularly those with multiple handicaps.

§ 1386.45 Counseling, program coordination, advocacy, follow-along, and protective services.

The State plan shall provide for counseling, program coordination, follow-along services, protective services, and personal advocacy on behalf of developmentally disabled adults.

§ 1386.46 Quality, extent, and scope of services being provided or to be provided.

(a) The State plan shall describe the quality, extent, and scope of services being provided, or to be provided, in implementing the State plan, under such other State plans for Federally assisted State programs as may be specified by the Secretary, but in any case including the following Federally assisted programs: Education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health plans.

(b) The State plan shall describe the quality, extent, and scope of treatment, services, and habilitation being provided or to be provided in implementing the State plan to person with developmental disabilities from funds under this part.

(1) *Quality.* The State plan shall provide that services and facilities furnished under the State plan for persons with developmental disabilities will be in accordance with the standards set forth in § 1386.17.

(2) *Extent.* The State plan shall describe the extent of services to be provided under the plan including: (i) The kinds of needs to be met, and individuals to be served (such as type and severity of disabilities, age groups, economic status), (ii) the geographic location, distribution, and accessibility of services, and (iii) other relevant factors.

(3) *Scope.* The State plan shall describe the scope of the services to be provided, taking into account Federally-aided State and local programs involved, manpower, and financial resources, and other factors, directed toward the alleviation of developmental disabilities, or toward the social, personal, physical or economic habilitation, or rehabilitation of individuals with such disabilities.

(c) The State plan shall describe how Federal funds allotted to the State will be used to complement and augment rather than duplicate or replace services and facilities which are eligible for Federal assistance under other State programs.

§ 1386.47 Habilitation plans.

For the purpose of complying with the assurance regarding individual habilitation plans (§ 1386.1(b)(5)(x)), the State plan shall describe the methods to be used to facilitate an annual review of the individual plans. The State plan shall also describe the requirements of the habilitation plan which shall include at least the following:

(a) The plan shall be in writing.

(b) The plan shall be developed jointly by (1) a representative(s) of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established, (2) such person, and (3) where appropriate, such person's parents or guardian or other representative.

(c) Such plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainment of such goals. Such objectives shall be stated specifically and in sequence and shall be expressed in behavorial or other terms that provide measurable indices of progress. The plan shall (1) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (2) state objective criteria and an evaluation procedure and schedule for determining whether such goals and objectives are being achieved, and (3) provide for a program coordinator who will be responsible for the implementation of the plan.

(d) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided, shall identify each agency which will deliver such services, shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

(e) The plan shall specify the role and objectives of all parties to the implementation of the plan.

(f) Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.

§ 1386.48 Program for construction of facilities.

When a specific portion of the State's allotment is set aside for construction, the State plan shall provide for the development of a program of construction, renovation, or modernization of facilities for the provision of services for persons with developmental disabilities. Such a program shall (a) be based on a statewide inventory of existing facilities and a survey of need; (b) set forth the relative need in accordance with § 1386.41; (c) assign priority to the construction of projects in order of relative need insofar as funds are available for costs of construction and costs of maintenance and operation of such projects.

§ 1386.49 Opportunity for appeal and hearing.

The State plan shall provide for an opportunity for appeal to and hearing before the State agency for construction to every applicant for a construction project who is dissatisfied with any action of the State agency for construction regarding its application.

DESIGN FOR IMPLEMENTATION

§ 1386.50 Design for implementation of State plan.

(a) The State plan shall contain a design for implementation which shall include (1) details of the methods to be used to implement the State plan, (2) specific objectives to achieve the goals set forth in the State plan, (3) a listing of the programs and resources to be used to meet such objectives, (4) priorities for spending of funds provided under this Subpart, (5) a detailed plan for the use of such funds, and (6) a method for periodic evaluation of the design's effectiveness in meeting such objectives.

(b) The designated State agency is responsible for selecting from alternative strategies those best methods which will achieve the goals and annual objectives as developed by the State council. The design for implementation shall identify the programs and activities related to each of the objectives set forth in accordance with §§ 1386.40 through 1386.45 and the amount of funds allocated to each objective. The expenses of the State council are to be included in the design for implementation.

(c) The design for implementation is to be submitted annually as part of the annual State plan revision. Revisions to the design for implementation may be made as necessary by the designated State administering agency and shall be approved by the State council prior to submission to the Secretary.

Subpart B—State Planning Council

§ 1386.60 Role of State planning council.

The role of the State council is to supervise the development of and approve the State plan prepared by the designated State agency(ies) by providing guidance through the establishment of goals and objectives, identification of gaps, and the setting of priorities for the allocation of funds. In order to establish credible goals, the State council shall be responsible for needs assessment, analysis of programs currently and potentially capable of providing services to the developmentally disabled, and establishment of priorities to deal with identified gaps. The State council shall establish methods for monitoring and evaluating the implementation of the State plan to ensure that established goals and objectives are being achieved.

§ 1386.61 Establishment of State planning council.

(a) Each State which receives assistance under this part shall establish a State council which will serve as an advocate for persons with developmental disabilities. The members shall be appointed by the Governor of the State.

(b) Membership. Each State planning council shall at all times include in its membership representatives of the principal State agencies, local agencies, and nongovernmental agencies, and groups concerned with services to persons with developmental disabilities. As a minimum, the following Federal/State programs must be represented by the State agency membership on the council: Education of the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, comprehensive health planning, and mental health. At least one-third of the membership of such a council shall consist of persons with developmental disabilities, or their parents or guardians, who are not officers of an entity, or employees of any State agency or of any other entity, which receives funds or provides services under this part.

[42 FR 5279, Jan. 27, 1977; 42 FR 34282, July 5, 1977]

§ 1386.62 Adequate staff.

Each State receiving assistance under this part shall engage for its State council personnel adequate to insure that the council has the capacity to fulfill its responsibilities and that the staff shall be responsible to the State council.

§ 1386.63 Duties of the State planning council.

The State council shall—

(a) Supervise the development of and approve the State plan required by this part;

(b) Monitor and evaluate the implementation of such State plan;

(c) To the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities;

(d) Submit to the Secretary, through the Governor, such periodic reports as the Secretary may reasonably request; and

(e) Submit revisions of the State plan to the Secretary.

Subpart C—Protection and Advocacy of Individual Rights

§ 1386.70 State system for protection and advocacy of individual rights.

(a) As a condition to a State's receiving an allotment under Subpart A of this part, the State shall provide assurances satisfactory to the Secretary that not later than October 1, 1977, (1) the State will have in effect a system to protect and advocate the rights of persons with developmental disabilities, (2) such system will have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State, and (3) such system will be independent of any State agency which provides treatment, services, or habilitation to persons with developmental disabilities. The Secretary shall not make an allotment under Subpart A of this part to a State for any fiscal year beginning after September 30, 1977, unless the State has in effect such a system.

(b) The Governor shall designate the agency responsible for administering the protection and advocacy system and shall approve the advocacy plan prior to the approval of the Secretary. Such plan is to be submitted in accordance with this section and guidelines established by the Secretary.

(c) The allotment to the State shall be computed in accordance with § 1386.10 (a), (b) except that the allotment to a State in any fiscal year shall not be less than $20,000.

Subpart D—Practice and Procedure for Hearings to States on Conformity of Developmental Disabilities Plans to Federal Requirements

GENERAL

§ 1386.80 Definitions.

For purposes of this Subpart only:

(a) The term "DDO" means Developmental Disabilities Office.

(b) The term "designee" means any other individual so designated by the Secretary's delegate.

(c) The term "Secretary" means the Secretary of the Department of Health and Human Services.

(d) The term "Secretary's delegate" means the Assistant Secretary for Human Development, or the Director, Developmental Disabilities Office.

§ 1386.81 Scope of rules.

(a) The rules of procedure in this Subpart govern the practice for hearings afforded by the Department to States pursuant to § 1386.2 or § 1386.16, and the practice relating to decisions upon such hearings.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as expressly provided herein.

§ 1386.82 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the DDO Hearing Clerk. Inquiries may be made at the Central Information Center, Department of Health and Human Services, 330 Independence Avenue, S.W., Washington, D.C. 20201.

§ 1386.83 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 1386.84 Suspension of rules.

Upon notice to all parties, the Secretary's delegate or the presiding officer, with respect to matters pending before him and within his jurisdiction, may modify or waive any rule in this part, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 1386.85 Filing and service of papers.

(a) All papers in the proceedings shall be filed with the DDO Hearing Clerk in an original and two copies. Originals only of exhibits and transcripts of testimony need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated representative will be deemed service upon the party.

PRELIMINARY MATTERS—NOTICE AND PARTIES

§ 1386.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Secretary's delegate to the State council and the designated State agency. The notice shall state the time and place for the hearing, and the issues which will be considered, and shall be published in the FEDERAL REGISTER.

§ 1386.91 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State.

§ 1386.92 Place.

The hearing shall be held in the city in which the regional office of the Department is located or in such other place as is fixed by the Secretary's delegate in light of the circumstances of the case, with due regard for the convenience and necessity of the parties or their representatives.

§ 1386.93 Issues at hearing.

(a) The Secretary's delegate may, prior to a hearing under § 1386.2 or § 1386.16, notify the State in writing of additional issues which will be considered at the hearing, and such notice shall be published in the FEDERAL REGISTER. If such notice is furnished to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after such notice was furnished, or such later date as may be agreed to by the Secretary's delegate.

(b) If, as a result of negotiations between the Department and the State, the submittal of a plan amendment, a change in the State program or other actions by the State, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Secretary's delegate, the hearing shall proceed on such new or modified issues.

(c) (1) If at any time, whether prior to during or after the hearing the Secretary's delegate finds that the State has come into compliance with Federal requirements on any issue in whole or in part he shall remove such issue from the proceedings in whole or in part as may be appropriate. If all issues are removed he shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing in whole or in part the Secretary's delegate shall provide all parties other than the Department and the State (see § 1386.94(b)) with the statement of his intention and the reasons therefor and a copy of the proposed State plan provision on which the State and he have settled and the parties shall have opportunity to submit in writing within 15 days, for the consideration of the Secretary's delegate and for the record, their views as to, or any information bearing upon, the merits of the proposed plan provision and the merits of the reasons of the Secretary's delegate for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 1386.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 1386.94 Request to participate in hearing.

(a) The Department and the State council and the designated State agency are parties to the hearing without making a specific request to participate.

(b) (1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have caused them injury and their interest is within the zone of interests to be protected by the governing Federal statute.

(2) Any individual or group wishing to participate as a party shall file a petition with the DDO Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and shall serve a copy on each party of record at that time in accordance with § 1386.85(b). Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments thereon.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the presiding officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on his petition, and if the petition is denied, he shall briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the DDO Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. He may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

HEARING PROCEDURES

§ 1386.100 Who presides.

(a) The presiding officer at a hearing shall be the Secretary's delegate or his designee.

(b) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

§ 1386.101 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. He shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part.

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him, including issuance of protective orders or other relief to a party against whom discovery is sought.

(6) Regulate the course of the hearing and conduct of counsel therein.

(7) Examine witnesses.

(8) Receive, rule on, exclude, or limit evidence or discovery.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(10) If the presiding officer is the Secretary's delegate, make a final decision.

(11) If the presiding officer is a hearing examiner, certify the entire record including his recommended findings and proposed decision to the Secretary's delegate.

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551-559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) If the presiding officer is a hearing examiner, his authority pertains to the issues of compliance by a State with Federal requirements which are to be considered at the hearing, and does not extend to the question of whether, in case of any noncompliance, Federal payments will not be made in respect to the entire State plan or will be limited to categories under or parts of the State plan affected by such noncompliance.

§ 1386.102 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 1386.103 Discovery.

The Department and any party named in the Notice issued pursuant to § 1386.90 shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26-37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, in his discretion, issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1386.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

§ 1386.105 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunty shall be given to refute facts and arguments advanced on either side of the issues.

§ 1386.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1386.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 1386.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 1386.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

POSTHEARING PROCEDURES, DECISIONS

§ 1386.110 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs which shall not exceed 20 days after termination of the hearing. Such briefs may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

§ 1386.111 Decisions following hearing.

(a) If the Secretary's delegate is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b)(1) If a hearing examiner is the presiding officer, he shall, within 30 days of the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Secretary's delegate. The Secretary's delegate shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Secretary's delegate exceptions to the recommended findings and proposed decision and a supporting brief or statement.

(3) The Secretary's delegate shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Secretary's delegate concludes:

(1) In the case of a hearing under § 1386.2, that a State plan does not comply with Federal requirements, he shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his discretion, the allotment will be limited to categories under or parts of the State plan not affected by such noncompliance;

(2) In the case of a hearing pursuant to § 1386.16, that the State is not complying with requirements of the State plan he shall also specify whether further payments will not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such noncompliance. The Secretary's delegate may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Secretary's delegate under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and the "Secretary's action" within the meaning of section 138 of the Act. The Secretary's delegate's decision shall be promptly served on all parties, and amici, if any.

§ 1386.112 Effective date of decision by Secretary's delegate.

(a) If, in the case of a hearing pursuant to § 1386.2, the Secretary's delegate concludes that a State plan does not comply with Federal requirements, and his decision provides that the allotment will be authorized but limited to categories under or parts of the State plan not affected by such noncompliance, his decision shall specify the effective date for the authorization of the allotment.

(b) If, in the case of a hearing pursuant to § 1386.16, the Secretary's delegate concludes that the State is not complying with requirements of the State plan, his decision that further payments will not be made to the State, or payments will be limited to categories under or parts of the State plan not affected, shall specify the effective date for the withholding of Federal funds.

(c) The effective date shall not be earlier than the date of the decision of the Secretary's delegate and shall not be later than the first day of the next calendar quarter.

(d) The provisions of this section may not be waived pursuant to § 1386.84.

PART 1387—DISCRETIONARY GRANT PROGRAMS

Subpart A—University Affiliated Facilities

DEMONSTRATION AND TRAINING GRANTS

Sec.
1387.1 Purpose of grant funds.
1387.2 Application content.
1387.3 Eligible applicants.
1387.4 Priority.

CONSTRUCTION PROGRAM

1387.10 Purpose.
1387.11 Application form.
1387.12 Application assurances.
1387.13 Approval of applications.
1387.14 Priority.

Subpart B—Special Project Grants

1387.20 Eligible projects.
1387.21 Nonduplication of Federal funds.
1387.22 Eligible applicants.
1387.23 Application content and procedures.

AUTHORITY: Pub. L. 91-517, 84 Stat. 1316; Pub. L. 94-103, 89 Stat. 486.

SOURCE: 42 FR 5287, Jan. 27, 1977, unless otherwise noted.

Subpart A—University Affiliated Facilities

DEMONSTRATION AND TRAINING GRANTS

§ 1387.1 Purpose of grant funds.

Demonstration and training grants authorized under the Act may be made for the purpose of:

(a) Assisting university affiliated facilities in meeting the cost of administering and operating demonstration facilities for the provision of exemplary services for persons with developmental disabilities, or for interdisciplinary training programs for personnel needed to render specialized services for persons with developmental disabilities;

(b) Supplementing one or more university affiliated facilities funded under these regulations to conduct a feasibility study of the ways in which a satellite center can be established and operated in areas not presently served by a university affiliated facility. These satellite centers shall provide services to persons with developmental disabilities in coordination with existing facilities funded under these regulations or from any other Federally supported program. Supplemental grants to university affiliated facilities for a feasibility study may not exceed $25,000; and

(c) Paying part of the costs of establishing and assisting satellite centers in meeting part of their administration and operation costs.

§ 1387.2 Application content.

Applications for demonstration and training grants may be submitted at the time and in the manner and detail prescribed by the Secretary in guidelines, and shall include the following:

(a) In the case of grants to university affiliated facilities for administration and operation and demonstration facilities and interdisciplinary training programs, evidence of how such university affiliated facility shall provide (1) interdisciplinary training programs for personnel needed to render specialized services to persons with developmental disabilities, and (2) services for persons with developmental disabilities by the operation of demonstration facilities;

(b) In the case of applications for an increase in the amount of a demonstration and training grant to meet the cost of conducting a feasibility study, assurances that such study shall be carried out in consultation with the State planning council for the State in which the facility is located and where the satellite center would be established; and according to guidelines to be issued by the Secretary;

(c) In the case of an application for a grant to establish or to administer and operate a satellite center(s), a copy of the feasibility study which documents the need for such satellite, conducted in accordance with section 121(a)(2) of the Act;

(d) For all applications, an assurance that the services and training programs to be supported are licensed, if necessary, according to the applicable State law(s) and also meet appropriate accreditation standards;

(e) For all applications, reasonable assurance that the grant will not result in decreased State, local, or other non-Federal funds for services for persons with developmental disabilities and for the training of personnel to provide such services; and

(f) For all applications, a statement describing the general methodology by which the project will be evaluated to determine whether objectives have been achieved.

§ 1387.3 Eligible applicants.

The applicant must be a public or nonprofit university affiliated facility or a satellite which has been found eligible to operate such a center.

§ 1387.4 Priority.

In approving applications, the Secretary shall give priority consideration to those programs which demonstrate an ability and commitment to provide within a community, rather than in an institution, services for persons with developmental disabilities.

CONSTRUCTION PROGRAM

§ 1387.10 Purpose.

The Secretary may make grants to university affiliated facilities to assist (a) in meeting the costs of the renovation or modernization of buildings which are being used in connection with an activity assisted by a demonstration and training grant; and (b) for the construction, renovation, or modernization of buildings to be used as satellite centers.

§ 1387.11 Application form.

An application shall be submitted in such form and manner and contain such information as the Secretary may require in addition to assurances required in § 1387.12.

§ 1387.12 Application assurances.

An application for a construction grant under this subpart may be approved by the Secretary only if it is supported by such reasonable assurances as may be required by law or executive order:

(a) The application for assistance is consistent with the appropriate State developmental disabilities plan;

(b) The application has been reviewed and commented upon by the appropriate State council;

(c) The facilities upon completion of construction will meet standards set forth in § 1386.17;

(d) The plans and specifications for the project to be assisted by the grant applied for are in accordance with § 1386.17(b);

(e) Title to the site for such project is or will be vested in the applicant or, in the case of a satellite center, in a public or other nonprofit entity which is to operate the center;

(f) Adequate financial support will be available in conformance with requirements of § 1386.1(b)(5)(viii) of these regulations;

(g) All laborers and mechanics will be paid in accordance with requirements set forth in § 1386.1(b)(5)(ix);

(h) No amendment to an approved application resulting in a substantial change in scope of work, function, or safety of the facility shall be put into effect without prior approval of the Secretary.

§ 1387.13 Approval of applications.

Applications under this subpart shall be reviewed by the Secretary who shall approve or disapprove the proposed project in whole or in part on the basis of established criteria.

§ 1387.14 Priority.

In approving applications under this subpart, the Secretary shall give priority consideration to university affiliated facilities funded under this Subpart for costs of renovating or modernizing existing buildings to enable them to comply with the Architectural Barriers Act of 1968.

Subpart B—Special Project Grants

§ 1387.20 Eligible projects.

Special project grants may be made to assist in meeting the costs of conducting an activity or program, hereinafter referred to as "project," that is intended and designed to benefit persons with developmental disabilities. No project (other than projects of national significance) shall be eligible unless the State or States in which it will be conducted has a State plan approved under Part 1386, Subpart A of this chapter, and unless it addresses one or more of the following:

(a) Demonstrations (and research and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are disadvantaged or multihandicapped), including programs for parent counseling and training, early screening and intervention, infant and preschool children, seizure control systems, legal advocacy, and community-based counseling, care, housing, and other services or systems necessary to maintain a person with developmental disabilities in the community;

(b) Public awareness and public education programs to assist in the elimination of social, attitudinal, and environmental barriers confronted by persons with developmental disabilities;

(c) Coordinating and using all availability community resources in meeting the needs of persons with developmental disabilities (especially those from disadvantaged backgrounds);

(d) Demonstrations of the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status;

(e) Technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in State and local planning or administration respecting such services and facilities;

(f) Training of specialized personnel needed for the provision of services for persons with developmental disabilities or for research directly related to such training;

(g) Developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities (including model integrated service projects);

(h) Gathering and disseminating information relating to developmental disabilities; and

(i) Improving the quality of services provided in and the administration of programs for such persons.

The Secretary may establish criteria for projects designed to achieve the purposes of the Act to the fullest extent possible within the limitation of available Federal resources.

§ 1387.21 Nonduplication of Federal funds.

In determining the amount of any grant for the costs of any project under this subpart, there shall be excluded, except as otherwise provided by statute enacted subsequent to December 18, 1975, from such costs an amount equal to the sum of (a) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project under any provision of law enacted prior to October 4, 1975, and (b) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

§ 1387.22 Eligible applicants.

Applications may be made by public and other nonprofit agencies, organizations, and institutions of higher education including community and junior colleges.

§ 1387.23 Application content and procedures.

(a) Applications for grants under this subpart shall be submitted in the form and detail, and in accordance with procedures and deadline dates, as prescribed by the Secretary in guidelines.

(b) The applicant shall provide, concurrently, a copy of an application for a grant under this Subpart to the appropriate State planning council for review and comment at the time the application is submitted to the Secretary. Comment with regard to a particular application must be submitted to the Secretary by the State planning council within 30 days from the date of submission by the applicant in order to assure consideration of such comments.

PART 1388—THE UNIVERSITY AFFILIATED FACILITIES PROGRAM

Subpart A—General

Sec.
1388.1 Purpose of the university affiliated facility program.
1388.2 Definitions.
1388.3 Eligible costs.
1388.4 Grant administration requirements.
1388.5 Federal share.
1388.6 Application content for all grants under this part.
1388.7 Payments.
1388.8 Availability of funds.

Subpart B—Grants for Administration and Operation of University Affiliated Facilities

1388.10 Purpose of grants.
1388.11 Eligibility requirements for applicants.
1388.12 Application content for university affiliated facilities.
1388.13 Standards for university affiliated facilities.
1388.14 Minimum grants.

Subpart C—Supplemental Grants

1388.20 Purpose of grants.
Sec.
1388.21 Eligible applicants.

Subpart D—Grants for Satellite Centers

1388.30 Purpose of grants.
1388.31 Specific requirements for applications.
1388.32 Minimum grants.

AUTHORITY: Pub. L. 91-517; Pub. L. 94-103; Pub. L. 95-602.

SOURCE: 44 FR 45949, Aug. 6, 1979, unless otherwise noted.

Subpart A—General

§ 1388.1 Purpose of the university affiliated facility program.

(a) The basic purposes of the university affiliated facility program are to train personnel to provide complex, high quality services to persons with developmental disabilities, and to assist in several ways, in improving the quality of services provided by other agencies which serve those persons.

(b) In order to carry out these purposes, the Act authorizes three kinds of grants:

(1) To administer and operate university affiliated facilities (See Subpart B.);

(2) To existing university affiliated facilities to carry out one or more additional specified activities (See Subpart C.);

(3) To extend the services of university affiliated facilities, through satellite centers, to unserved geographic areas (See Subpart D.).

§ 1388.2 Definitions.

For purposes of this part:

"The Act" means the Developmental Disabilities Assistance and Bill of rights Act, as amended by Pub. L. 95-602.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration.

"Developmental disability" means a severe, chronic disability of a person which—

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age twenty-two;

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three or more of the following areas of major life activity: (1) Self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic sufficiency; and

(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Satellite Center" means an entity which is affiliated with one or more university affiliated facility or facilities to deliver services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available.

"Standard" means a principle with which university affiliated facilities are compared in order to determine their eligibility for funding.

"State planning council" means an organization established under Sec. 137 of the Act.

"University affiliated facility" means a public or non-profit facility which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

(a) Interdisciplinary training for personnel concerned with developmental disabilities;

(b) Demonstration of the provision of exemplary services relating to persons with developmental disabilities;

(c)(1) Dissemination of findings relating to the provision of services to persons with developmental disabilities, and (2) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research.

§ 1388.3 Eligible costs.

Grant funds, including the grantee's share, must be used only for administration and operation of a university affiliated facility or a satellite center.

§ 1388.4 Grant administration requirements.

The following parts of Title 45 CFR apply to grants funded under this part. The applicable provisions are noted in each part:

45 CFR Part 16—Department Grants Appeals Process
45 CFR Part 46—Protection of Human Subjects
45 CFR Part 74—Administration of Grants
45 CFR Part 75—Informal Grant Appeals Procedures, Subpart A (Indirect Cost Appeals)
45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of Title VI of Civil Rights Act of 1964
45 CFR Part 81—Practice and Procedure for Hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance
45 CFR Part 86—Nondiscrimination on Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance

§ 1388.5 Federal share.

The Federal share of any approved project may not exceed 75 percent of the necessary cost as determined by the Commissioner, except that if the project is located in and serves primarily people who live in an urban or rural poverty area, the Federal share may be as much as 90 percent of the project's cost.

§ 1388.6 Application content for all grants under this part.

An applicant for any grant under this part must submit an application at the time and in the manner and detail prescribed by the Commission in program announcements, including:

(a) An assurance that the grant will not result in any decrease in State, local, and other non-Federal funds made available to the grantee for services for persons with developmental disabilities and for training of persons to provide such services. The grantee must use grant funds to supplement and, to the extent practicable, increase the level of those funds;

(b) A plan, including a description of the methodology, to evaluate the project.

§ 1388.7 Payments.

Payments are made according to the provisions of 45 CFR Part 74.

§ 1388.8 Availability of funds.

(a) For Federal fiscal year (FY) 1979, the first $9,000,000 appropriated will be made available for grants for administration and operation of university affiliated facilities and for satellite centers. For FY 1980, and FY 1981, the corresponding amounts are $10,000,000 and $11,000,000 respectively.

(b) If the appropriation is larger than the amount specified in paragraph (a) of this section, at least 40 percent of the excess amount will be made available for supplemental grants and grants to satellite centers.

(c) Amounts and purposes of grants will be publicized each year in program announcements in the FEDERAL REGISTER.

Subpart B—Grants for Administration and Operation of University Affiliated Facilities

§ 1388.10 Purpose of grants.

The purpose of grants to university affiliated facilities is to assist them to administer and operate demonstration facilities for the provision of services to persons with developmental disabilities, and interdisciplinary training programs for personnel needed to provide specialized services for these persons.

§ 1388.11 Eligibility requirements for applicants.

A public or non-profit facility which is associated with, or is an integral part of, a college or university is an eligible applicant if it provides reasonable assurances that—

(a) The facility is in full compliance with the standards set forth in § 1388.13; *or*

(b) Progress is being made toward bringing the facility into full compliance and that it will be in full compliance within three years.

§ 1388.12 Application content for university affiliated facilities.

An application must include either of the following;

(a) A description and explanation of the ways the facility meets each of the four standards in § 1388.13; or

(b) A description and explanation of:

(1) The goals for achievement of the standards;

(2) Steps to be taken to achieve those goals; and

(3) A timetable for the steps and for achievement of each goal.

§ 1388.13 Standards for university affiliated facilities.

All university affiliated facilities must comply with the following standards within the time period specified in § 1388.11:

STANDARDS

(a) *Administration.* The university affiliated facility must be administered effectively and economically.

(1) The administration of the university affiliated facility must be designed to provide a program in which all elements can be held accountable for performance prescribed in terms of planned, measurable goals.

(2) The university affiliated facility must base its planning on systematically acquired information in order to provide direction to allocations of staff and resources to meet its goals.

(b) *Interdisciplinary training.* The university affiliated facility shall conduct an effective interdisciplinary training program for persons concerned with developmental disabilities. The training shall enable students to:

(1) Develop skills for effective participation in interdisciplinary team processes;

(2) Become aware of, and use appropriately, the contributions of other professions in the treatment and care of the developmentally disabled; and

(3) Realize the interdependent nature of various disciplines in serving the developmentally disabled and alter the trainees' practice of their own disciplines accordingly.

(c) *Exemplary services.* The university affiliated facility shall demonstrate exemplary services relating to the special needs of persons with developmental disabilities who are of various ages.

(1) "Exemplary services" means services that are of high quality and deserving of replication. These services might include direct services such as diagnosis, evaluation, treatment, training, and remediation services, or indirect services such as prevention, public awareness, information and referral, and advocacy.

(2) The purposes of demonstrating exemplary services are: To provide evidence for improvements in services; to utilize more effective approaches to problems; to make traditional approaches more cost effective; and to show how to deliver a specialized service in a generic setting or facility not located in a university setting.

(d) *Dissemination of information.* The university affiliated facility shall disseminate to practitioners and administrators findings relating to the provision of services to persons with developmental disabilities. It shall also provide researchers with information on the needs for further service-related research. "Dissemination of findings" means the production of publications and training materials, and the holding of seminars and the like, for practitioners and administrators concerned with providing services to persons with developmental disabilities.

(1) The university affiliated facility shall make material available to practitioners, administrators, and researchers. It shall contain any necessary precautionary statements along with any claims that are made.

(2) The university affiliated facility shall develop a plan for the dissemination of information to assure that the material is relevant to practitioners, administrators, and researchers who plan, devise, or deliver services to persons with developmental disabilities.

§ 1388.14 Minimum grants.

(a) The amount of any grant under this subpart may not be less than $150,000 for any fiscal year.

(b) To the extent possible within the appropriation for the fiscal years ending September 30, 1979, 1980, and 1981, grants which exceeded $150,000 in the fiscal year ending September 30, 1978 may not be reduced.

Subpart C—Supplemental Grants

§ 1388.20 Purposes of grants.

Grants may be awarded for one or more of the following activities:

(a) To assess the need for trained personnel to provide assistance to persons with developmental disabilities;

(b) To provide service-related training to practitioners providing services to persons with developmental disabilities;

(c) To conduct an applied research program designed to produce more efficient and effective methods (1) to deliver services to persons with developmental disabilities, and (2) to train professionals, para-professionals, and parents who provide these services;

(d) To conduct a feasibility study of the ways in which a university affiliated facility, singly or jointly with other university affiliated facilities funded under Subpart B, can establish and operate one or more satellite centers located in areas not served by a university affiliated facility. The study must be carried out in consultation with the State planning council for the State in which the facility is located and where the satellite center will be established. The amount of any grant for this purpose may not be more than $25,000.

§ 1388.21 Eligible applicants.

Only a university affiliated facility receiving a grant under Subpart B is eligible to receive supplemental grants.

Subpart D—Grants for Satellite Centers

§ 1388.30 Purpose of grants.

The purpose of these grants is to assist university affiliated facilities to extend their services into geographical areas where adequate services are not otherwise available.

§ 1388.31 Application content.

(a) The applicant shall be a university affiliated facility or a satellite center.

(b) The requirements listed in § 1388.6 must be met. The application must contain the name of the university affiliated facility which carried out the study of the feasibility of establishing the satellite center, and a description of the geographical areas to be served by the center. It must also contain a description of the services to be provided and the resources available to support them.

§ 1388.32 Minimum grants.

Any grants made to a satellite center which received a grant for its administration and operation in the fiscal year ending September 30, 1978 may not be less than $75,000.

SUBCHAPTER J—SOCIAL SERVICES FOR INDIVIDUALS AND FAMILIES UNDER TITLES I, IV-A AND B OF THE SOCIAL SECURITY ACT

PART 1392—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV PARTS A AND B OF SOCIAL SECURITY ACT

EDITORIAL NOTE: At 40 FR 45819, Oct. 3, 1975, Part 220 (relocated in Part 1392) was amended and the extent of its applicability limited. Part 228 (relocated in Part 1396) 40 FR 27354, June 27, 1975), of this chapter supersedes Part 220 (relocated in Part 1392) with the following exceptions:

1. Regulations in this part relating to child welfare services under Part B of title IV of the Social Security Act, remain effective for the 50 States and the District of Columbia.

2. Regulations in this part pertaining to the operation of services programs (under titles I, IV-A, IV-B, X, XIV, and XVI (AABD) of the Social Security Act), remain in effect for Puerto Rico, Virgin Islands, and Guam and are now applicable to the Commonwealth of the Northern Mariana Islands.

3. Regulations in this part pertaining to the Work Incentive Program (WIN) are superseded by 45 CFR Part 224 (40 FR 43181, Sept. 18, 1975).

However, statutes affecting the social services programs have been enacted since the provisions of this Part 220 (relocated in Part 1392) were originally published. Therefore, relevant sections of the following acts must be applied in implementing Part 220 (relocated in Part 1392): (1) Social Security Amendments of 1972 (Pub. L. 92-603); (2) Revenue Sharing Act (Pub. L. 92-512); (3) extension of Renegotiation Act (Pub. L. 93-66); and (4) Pub. L. 93-233.

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AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); Sec. 118 of Pub. L. 96-86, unless otherwise noted.

SOURCE: 45 FR 56691, Aug. 25, 1980, unless otherwise noted.

Subpart A—Mandatory Provisions

§ 1392.1 General.

(a) The State plans for AFDC services in Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands, and for CWS in the Territories, the 50 States and the District of Columbia, pursuant to title IV, parts A and B of the Social Security Act must, with respect to the administration of the service programs for families and children,

(1) Contain provisions committing the State to meet the requirements in this subpart;

(2) Contain provisions committing the State to progress in the extension and improvement of services;

(3) Indicate the steps to be taken to meet the requirements; and

(4) For title IV-B, provide for the submission of such implementation and progress reports as may be specified.

(b) The State plans for services under title IV-A must contain provisions committing the State to comply with 45 CFR Part 74.

ORGANIZATION AND ADMINISTRATION

§ 1392.2 Single organizational unit.

(a) There must be a single organizational unit, within the single State agency, at the State level and also at the local level to provide or supervise all services to families and children included in the State plan for title IV, parts A and B. Within the single organizational unit the same subunits must be responsible for setting service policies and furnishing services for both AFDC and CWS cases. Specific services may be delegated within the agency for services common to other groups (e.g., homemaker service for the aged), provided that this does not tend to create differences in the quality of services for AFDC and CWS cases. (This requirement does not apply to States where the AFDC and CWS programs were administered by separate agencies on Jan. 2, 1968.)

(b) Such unit must, under the direction of its chief officer (who, at the State level, is not the head of the State agency), be responsible for:

(1) Development of policy and the maintenance of policy control for all parts of the service program.

(2) Direct program supervision of the local agency or otherwise be in a position to assure proper program implementation.

(c) The State plan must also include the structure of such unit and show its place in the overall welfare agency and the distribution of responsibilities among the major divisions within the unit.

§ 1392.3 Full-time staff for services.

(a) The functions of arranging or providing services to individuals should, to the maximum extent feasible, be performed by persons other than those who determine eligibility for financial and medical assistance and provide financial assistance.

(b) There must be adequate numbers of full-time staff assigned to service functions at all levels of agency operations and, to this end, there must be progress toward the objective of relieving all staff of nonservice functions. (This does not exclude service at intake, i.e., providing information, screening and referral within the agency and community for all families and children seeking agency help; and determining need for specific services.)

§ 1392.4 Advisory committees.

(a) An advisory committee on AFDC and CWS programs must be established at the State level and at local levels where the programs are locally administered, except that in local jurisdictions with small caseloads alternate procedures for securing similar participation may be established. The State plan must show that the advisory committee will:

(1) Advise the principal policy setting and administrative officials of the agency and have adequate opportunity for meaningful participation in policy development and program administration, including the furtherance of recipient participation in the program of the agency.

(2) Include representatives of other State agencies concerned with services, representatives of professional, civic or other public or private organizations, private citizens interested and experienced in service programs, and recipients of assistance or services or their representatives who shall constitute at least one-third of the membership. Such recipients or their representatives must be selected in a manner that will assure the participation of the recipients in the selection process and that they are representative of recipients of assistance or services.

(3) Be provided such staff assistance from within the agency and such independent technical assistance as are needed to enable it to make effective recommendations.

(4) Be provided with financial arrangements, where necessary, to make possible the participation of recipients in the work of the committee structure.

(b) An advisory committee on day care services must be established at the State level, either as a separate committee, or all or a part of the advisory committee on AFDC and CWS programs may be assigned this function. In either event, the committee must have at least one-third of its membership drawn from recipients or their representatives; and include representatives of agencies and groups concerned with day care or related services, i.e., other State agencies, professional or civic or other public or nonprofit private agencies, organizations or groups.

(c) The State plan must also show the structure and functions of the State and local committees for AFDC and CWS programs and for day care services; their relationship to other boards and committees associated with the State and local agencies; the system for selecting recipients or their representatives; and assure that the State committee for AFDC and CWS programs will be established no later than 90 days after plan approval.

§ 1392.5 Use of professional staff.

(a) There must be adequate numbers and suitable qualifications for personnel drawn from social work and other appropriate disciplines to plan, develop and supervise services and to provide specialized services to families and children; and there must be an adequate system of career development and progression for such individuals.

(b) The State plan must also include:

(1) The staffing pattern for professional positions carrying out the service functions.

(2) An explanation of how the quantity and quality of services will be maintained in instances where the number of professional personnel performing eligibility and service functions results in a caseload or workload higher than that in effect during fiscal year 1968.

§ 1392.6 Use of subprofessional personnel.

(a) No later than July 1, 1969 provision must be made for the training and effective use of subprofessional staff in the programs of services to families and children, including part-time or full-time employment of recipients and other persons of low income. (The term "subprofessional," as used here, means persons with less than college education, a high school graduate or a person with little or no formal education.)

(b) The State plan must also include:

(1) The methods of recruitment and selection, as will offer opportunities for employment of such persons.

(2) A career service plan that permits such persons to enter employment at the subprofessional level and progress to positions of increasing responsibility and remuneration.

(3) An organized training program, supervision and supportive assistance for such staff.

(4) Annual progression in the utilization of increasing numbers of such staff until there is optimal use of subprofessional staff in achieving the service goals for families and children.

§ 1392.7 Use of volunteers.

(a) No later than July 1, 1969, provision must be made for the training and effective use of nonpaid or partially paid volunteers representing various age groups, specifically including senior citizens and young persons, in the service programs for families and children and assisting related advisory committees.

(b) The State plan must also include:

(1) The methods of recruitment and selection which will assure participation of volunteers of all income levels.

(2) A program for organized training and supervision of such volunteers.

(3) Assignment to a specific position in which rests responsibility for the development, organization, and administration of the volunteer program, and for coordination of the program with related functions.

(4) Provision for meeting the costs incident to volunteer service.

(5) Annual progression in the utilization of volunteers until such use is sufficient for the achievement of the service goals for families and children.

§ 1392.8 Relationship and use of other agencies.

(a) There must be maximum utilization of and coordination with other public and voluntary agencies, including with respect to the latter their experience as well as their facilities, providing services similar or related to the services provided under the plan, where such services are available without additional cost.

(b) Consideration must be given to the appropriate use of other public and voluntary agencies as sources for the purchase of care and services and such use must be based on a determination that required program standards will be met, a comparison of the effectiveness with which the services are likely to be rendered and the anticipated costs thereof.

(c) The State plan must show ways in which public and voluntary agencies will be used, including types of services to be purchased.

§ 1392.9 Delivery and utilization of services.

(a) There must be progress in achieving organizational patterns and simplified administrative procedures that assure effective delivery and utilization of services.

(b) The State plan must also provide for continued assessment and necessary adaptations to achieve this requirement.

§ 1392.10 Training.

(a) For social services programs under title IV-A, the State agency shall:

(1) Provide for a training program to improve the operation of the program and to assure a high quality of service; and

(2) Implement its training program in accordance with the requirements of 45 CFR 235.61 through 235.65, except that copies of the annual training plan required by 45 CFR 235.62(c) shall be made available upon request to the Regional Administrator, Office of Human Development Services.

(3) Notwithstanding 45 CFR 235.62, 235.63 and 235.64, effective July 1, 1982, establish and implement a training plan for child day caregivers that

meets the requirements of 45 CFR Part 71.

(b) For child welfare services programs under title IV-B:

(1) There must be staff development on a continuing, progressive and comprehensive basis for all staff responsible for the development and provision of services. Such staff development shall include orientation, in-service training and educational leave. Provision shall be made for increasing each year the number of educational leaves for professional training to assure an adequate number of professional staff for these programs; and

(2) The state agency shall, effective July 1, 1982, establish and implement a training plan for child day caregivers that meets the requirements of 45 CFR Part 71.

[45 FR 56691, Aug. 25, 1980, as amended at 46 FR 37051, July 17, 1981]

§ 1392.11 Appeals, fair hearings and grievances.

(a) There must be provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and made available to the State advisory committee and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal.

(b) There must be a system through which recipients may present grievances about the operation of the service program.

(c) The State plan must also describe the system for appeals and grievances and the methods of informing recipients of their right to appeal.

MANDATORY SERVICES APPLICABLE TO TITLE IV, PART A

§ 1392.15 General.

The State plan:

(a) Must assure that responsibility is assumed for the provision of services to all appropriate persons receiving aid and others in the home whose needs were considered in determining eligibility for such aid, as called for under each of the requirements in §§ 1392.16-1392.25; and

(b) Must be specific in its identification of the services to be provided or purchased and the families and children to whom they will be available.

§ 1392.16 Service plan.

(a) A service plan must be developed and maintained on a continuous basis for each family and child who requires service to maintain and strengthen family life, foster child development and achieve permanent and adequately compensated employment.

(b) By January 1, 1970, a service plan must be developed for each family and child in the current caseload and, within 1 year following approval for financial assistance for those added to the caseload after March 31, 1969.

(c) Such plans must be developed in cooperation with the family and must be responsive to the needs of each individual within the family, while taking account of the relation of individual needs to the functioning of the family as a whole. Families shall have the right to accept or reject such plans. (See 45 CFR Part 224 for special provisions on refusal without good cause under the WIN program and referral of Unemployed Fathers to the WIN program.)

(d) Service plans must, as a minimum, include the objectives and content of the service requirements in §§ 1392.15-1392.24.

(e) Each service plan must be reviewed as often as necessary, but at least annually, to assure that it is practically related to needs and is being effectively implemented.

§ 1392.17 Employment objectives.

(a) Services must be provided to assist all appropriate persons to achieve employment and self sufficiency.

(b) Priority must be given to screening the entire caseload, and new cases as added, to identify those persons who are immediately referrable for training and employment and development service plans for them.

(c) With respect to employment objectives, there must be as a minimum:

(1) Identification of individuals currently ready or with potentials for employment or training.

(2) Determination of the individuals appropriate for referral to programs offering training and employment services and referral of such individuals. (See 45 CFR Part 224 for policies governing referrals to the Work Incentive Program.)

(3) General and specialized diagnostic assessments (e.g., vocational, rehabilitation, education, medical, and psychological) of health, learning, and other limitations that prevent involvement in employment or training.

(4) Plans to insure that training and employment lead to stability of employment in jobs which take full advantage of the individual's potential.

(5) Provisions of services necessary to deal with personal and family barriers which prevent or limit individuals in their use of training and in their achievement of stable employment.

(6) Provision for utilization of public and voluntary agencies in the fields of vocational rehabilitation, health, vocational, and other education, including special attention to the capabilities of rehabilitation centers and workshops, community action agencies, neighborhood centers, and similar organizations.

§ 1392.18 Child care services.

(a) Child care services, including inhome and out-of-home services, must be available or provided to all persons referred to and enrolled in the Work Incentive Program and to other persons for whom the agency has required training or employment. Such care must be suitable for the individual child; and the caretaker relatives must be involved in the selection of the child care source to be used if there is more than one source available. However, when there is only one source available, the caretaker relatives must accept it unless they can show that it is unsuitable for their child. The child care services must be maintained until the caretaker relatives are reasonably able to make other satisfactory child care arrangements.

(b) Progress must be made in developing varied child care resources with the aim of affording parents a choice in the care of their children.

(c) All child care services must meet the following standards:

(1) *In-home care.* (i) Homemaker service under agency auspices must meet the standards established by the State agency which must be reasonably in accord with the recommended standards of related national standard setting organizations, such as the Child Welfare League of America and the National Council for Homemaker Services.

(ii) Child care provided by relatives, friends, or neighbors must meet standards established by the State agency that, as a minimum, cover age, physical and emotional health, capacity and time of the caretaker to provide adequate care; hours of care; maximum number of children to be cared for; feeding and health care of the children.

(2) *Out-of-home care.* (i) Day care facilities, used for the care of children, must be licensed by the State or approved as meeting the standards for such licensing and day care facilities and services must comply with the standards of the Federal Interagency Day Care Requirements which are in effect through September 30, 1980, and the requirements of section 422(a)(1) of the Social Security Act (see § 1392.56).

(ii) Effective July 1, 1980, FFP is available for the costs of out-of-home child day care services if the services meet applicable State and local standards.

(iii) Effective January 2, 1982, FFP is available for the costs of out-of-home child day care services only if the services meet the requirement prescribed in 45 CFR Part 71.

(d) Both in-home and out-of-home child care provided for persons referred to the WIN program must be a service cost rather than an assistance cost.

[45 FR 56691, Aug. 25, 1980, as amended at 46 FR 37051, July 17, 1981]

§ 1392.19 Foster care services.

Effective July 1, 1969, services must be provided for children receiving aid in the form of foster care under title IV—Part A, to:

(a) Assure placement appropriate to the needs of each child.

(b) Assure that the child receives proper care in such placement.

(c) Determine continued appropriateness of and need for placement through periodic reviews, at least annually.

(d) Improve the conditions in the home from which the child was removed, so that the child may be returned to his own home, or otherwise plan for the placement of the child in the home of other relatives, adoptive home or continued foster care, as appropriate.

(e) Work with other public agencies that have responsibility for the placement and care of any such children to assure that these agencies carry out their responsibilities in accordance with their agreement with the State agency administering or supervising the administration of AFDC.

§ 1392.20 Prevention or reduction of births out-of-wedlock.

There must be a program to prevent or reduce the incidence of births out-of-wedlock and to otherwise strengthen family life. Services to prevent and reduce births out-of-wedlock must be extended progressively to all appropriate adults and youths, with initial priority for mothers who have had children born out-of-wedlock within the 2 preceding years or who are currently pregnant out-of-wedlock and for youths living in conditions immediately conducive to births out-of-wedlock. Services must be provided for fathers of such children.

§ 1392.21 Family planning services.

(a) Family planning services must be offered and provided to those individuals wishing such services, specifically including medical contraceptive services (diagnosis, treatment, supplies, and followup), social services and educational services. Such services must be available without regard to marital status, age, or parenthood. Individuals must be assured choice of method and there must be arrangements with varied medical resources so that individuals can be assured choice of source of service. Acceptance of any services must be voluntary on the part of the individual and may not be a prerequisite or impediment to eligibility for the receipt of any other service or aid under the plan. Medical services must be provided in accordance with the standards of other State programs providing medical services for family planning (e.g., maternal and child health services).

(b) Federal financial participation in State claims for abortions is governed by 42 CFR 441.200 through 441.203 and 441.205 through 441.208.

(c) If a State authorized sterilization as a family planning service, it must comply with the provisions of 42 CFR Part 441, Subpart F.

§ 1392.22 Services to meet particular needs of families and children.

Services must be provided to families and children as follows:

(a) Assist children to obtain education in accordance with their capacities.

(b) Improve family living through assisting parents to overcome homemaking and housing problems.

(c) Assist in reuniting families.

(d) Assist parents in money management, including consumer education.

(e) Assist parent in child rearing.

(f) Offer education for family living.

(g) Evaluate the need for, and in appropriate cases provide for, protective and vendor payments and related services.

§ 1392.23 Protective services and cooperation with courts.

(a) Protective services must be provided to children receiving aid who are found to be in danger of or subject to neglect, abuse or exploitation.

(b) There must be a specific plan whereby the State or local agency will bring cases of child abuse, neglect or exploitation to the attention of appropriate courts or law enforcement agencies. The same criteria for referral to courts or law enforcement agencies must be used as are used by the State or local agency for all other parents and children. There must be continued cooperation with such courts and officials to assist in planning of the child to serve his best interests.

§ 1392.24 Services related to health needs.

Services must be provided to families and children with health needs through identifying needs for preventive and remedial medical services; locating organizations or individuals who are willing to provide quality services on a dignified basis and helping to solve any problems which may prevent them from obtaining needed medical services and from making optimum use of the services available.

MANDATORY SERVICES APPLICABLE TO TITLE IV, PART B

§ 1392.40 Child welfare services.

(a) The State plan must assure progressive extension of child welfare services so that such services will be available in all political subdivisions by July 1, 1975, for all children in need of them; including annual progress in one or more of the following dimensions:

(1) Covering additional political subdivisions;

(2) Reaching additional children in need of services;

(3) Expanding the range of services provided;

(4) Improving the quality of services through additional trained child welfare personnel.

(b) The State plan must provide that:

(1) As a basis for giving priority in extending the provision of child welfare services to communities with the greatest need for such services, there will be a reasonable and objective method for assessing this need, taking into consideration their relative financial need.

(2) As a minimum, there will be child welfare services to children in their own homes and the provision of foster care of children.

(3) There will be a case plan, including diagnostic evaluation and plan for treatment, when a child is accepted for child welfare services; and periodic review of such plan.

(4) Child welfare services will be available on the basis of need for services and shall not be denied on the basis of financial need, legal residence, social status or religion.

(5) Child welfare services will not be limited to AFDC cases.

OTHER REQUIREMENTS APPLICABLE TO TITLE IV, PARTS A AND B, AS INDICATED

§ 1392.45 Community planning (applicable to IV-A and B).

(a) There must be progress in developing State and local agency leadership for participation in community affairs which will result in the development of community resources necessary to achieve program objectives of title IV, parts A and B.

(b) The State plan must also show the steps to be taken to achieve this objective, including the staffing for this function.

§ 1392.46 Reports and evaluations (applicable to IV-A and B).

Such reports and evaluations must be furnished to the Secretary as he may specify showing the scope, results and costs of services for families and children.

§ 1392.47 Implementation by local agencies (applicable to IV-A and B).

(a) The State agency must have methods of assuring that local agencies are meeting the plan requirements.

(b) The State plan must also describe the methods to be used to carry out this requirement.

§ 1392.48 [Reserved]

§ 1392.49 Other plan requirements for child welfare services under title IV-B (see also Subpart D of this part).

(a) *Single State agency.* (1)(i) The State plan shall designate a State agency as the single agency for the administration of the plan or for supervision of the administration of part of the plan by local agencies.

(ii) Effective July 1, 1969, the State plan must provide that the State agency responsible for the State plan approved under title IV-A will also administer or supervise the administration of the plan under title IV-B, except that—

(A) If on January 2, 1968, the State agency administering the plan under title IV-B is different from the State agency responsible for the State plan approved under title IV-A, the requirement in this subdivision (ii) shall not apply so long as such agencies are different; or

(B) If on January 2, 1968, the local agency administering the plan approved under title IV-B is different from the local agency administering the plan approved under title IV-A, the requirement in paragraph (a)(1)(ii) of this section shall not apply with respect to such local agencies so long as such agencies are different.

(2) The State plan shall set forth the authority of the State agency under State law for the administration of the program. Where there is administration by local agencies, the plan shall set forth the legal basis for such administration or for the supervision of such administration by the State agency. Citations to all directly pertinent laws and copies of all interpretations of such laws by appropriate State officials, and citations to all directly pertinent interpretations of laws by courts, shall be furnished as part of the plan.

(b) *Organization for administration.* The State plan shall describe the organization of the State agency for the administration of the plan and of any local agencies engaged in such administration. It shall also describe the methods of administration utilized by the State agency in the administration of the plan and by any local agencies engaged in such administration. Where there is administration by local agencies, the State plan shall describe the nature and extent of the supervision exercised by the State agency.

(c) *Personnel standards.* (1) There shall be, with respect to the employees of the State agency and those of local agencies, personnel administration on a merit basis which shall be in accordance with current Federal Standards for a Merit System of Personnel Administration in 45 CFR Part 70. The State plan shall contain necessary materials relating to personnel administration to permit evaluation for compliance with the said Standards for a Merit System of Personnel Administration.

(2) The State plan must provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in 45 CFR 70.4. The affirmative action plan will provide for specific action steps and timetables to assure such equal opportunity. The plan shall be made available for review upon request.

(d) *Coordination with services under AFDC.* There shall be coordination between child welfare services and services in AFDC with a view to provision of welfare and related services which will best promote the welfare of such children and their families.

(e) *Reports.* The State plan shall provide that the State agency will make such reports with respect to any and all phases of the State program of child welfare services in such form and containing such information as HDS may find necessary to assure the correctness and verification of such reports.

Subpart B—Optional Provisions

§ 1392.50 General.

If a State elects under title IV-A to provide services for additional groups of families and children, i.e., current applicants or former or potential applicants and recipients of public assistance, the State plan must—

(a) Identify such group or groups and specify the services to be made available to such group;

(b) Contain provisions committing the State to meet the requirements in this subpart; and

(c) Indicate the steps to be taken to meet those requirements.

SERVICES IN AID TO FAMILIES WITH DEPENDENT CHILDREN

§ 1392.51 Range of optional services.

(a) The Social Security Act (sec. 406(d)) defines the full range of family services in AFDC as follows: "* * * services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence."

(b) The full range of or selected family services, and child welfare services as defined in this subpart, may be included except for those services excluded in § 1392.61.

(c) Following are types of selected services;

(1) *Child care services.* Child care services provided to families other than those required in § 1392.15, must meet the standards required in that section.

(2) *Emergency assistance—services.* Emergency assistance in the form of services to needy families with children, including migrants, may be provided. Such services must be planned and staffed, so as to assure immediate accessibility and prompt response, and separate policy instructions relating to emergency assistance must apply. (These separate policies do not apply to use of title IV-B funds.)

(3) *Educational and training services.* Educational and training services may be included where the Work Incentive Program has not been initiated in a local jurisdiction or is inadequate in scope or size to meet the needs of recipients; or where the Work Incentive Program has been initiated and there is an agreement with representatives of the Labor Department that these services are not available to recipients. Full use must be made of services available through the Employment Service.

(4) *Legal services.* Legal services may be included for families desiring the help of lawyers with their legal problems (see separate policies governing the provision of such services).

§ 1392.52 Coverage of optional groups for services.

(a) The agency may elect to provide services to all or to reasonably classified subgroups of the following:

(1) Families and children who are current applicants for financial assistance.

(2) Families and children who are former applicants or recipients of financial assistance.

(3) Families and children who are likely to become applicants for or recipients of financial assistance, i.e., those who:

(i) Are eligible for medical assistance as medically needy persons, under the State's title XIX plan.

(ii) Would be eligible for financial assistance if the earnings exemption granted to recipients applied to them.

(iii) Are likely, within 5 years, to become recipients of financial assistance.

(iv) Are at or near dependency level including those in low-income neighborhoods and among other groups that might otherwise include more AFDC cases, where services are provided on a group basis.

(4) All other families and children for information and referral service only.

(b) All families and children in the above groups, or a selected reasonable classification of families and children with common problems or common service needs, may be included.

CHILD WELFARE SERVICES

§ 1392.55 Range of optional services and groups to be served.

(a) The Social Security Act (sec. 425) defines the full range of child welfare services as follows: " * * * public social services which supplement, or substitute for, (1) parental care and supervision for the purpose of preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day care or other child care facilities."

§ 1392.56 Day care services.

(a) If day care services are included under title IV-B, they must meet the standards required in § 1392.18(c)(2), and in addition, the State plan must indicate compliance with the following:

(1) Cooperative arrangements with State health and education agencies to assure maximum utilization of such agencies in the provision of health and education services for children in day care.

(2) An advisory committee on day care services as set forth in § 1392.4(b).

(3) A reasonable and objective method for determining the priorities of need, as a basis for giving priority, in determining the existence of need for day care, to members of low-income or other groups in the population and to geographical areas which have the greatest relative need for the extension of day care.

(4) Specific criteria for determining the need of each child for care and protection through day care services.

(5) Determination that day care is in the best interests of the child and the family.

(6) Provision for determining, on an objective basis, the ability of families to pay for part or all of the cost of day care and for payment of reasonable fees by families able to pay.

(7) Provision for the development and implementation of arrangements for the more effective involvement of the parent or parents in the appropriate care of the child and the improvement of his health and development.

(8) Provision of day care only in facilities (including private homes) which are licensed by the State or approved as meeting the standards for such licensing.

Subpart C—Federal Financial Participation

§ 1392.60 General.

The regulations in this subpart deal separately with Federal financial participation in the costs of services under the AFDC and Child Welfare Services programs because these programs have different legal provisions governing the extent of Federal funding. However, in general there are no differences in the kinds of services or methods of providing services under these two programs.

§ 1392.61 Federal financial participation; AFDC.

(a) *General.* Federal financial participation is available in expenditures for—

(1) Properly and efficiently administering the plan;

(2) Providing the services for the groups of families and children; and

(3) Carrying out the activities described in Subparts A and B of these regulations that are included in the approved State plan. Such participation will be at the rates prescribed in this subpart.

(b) *Persons eligible for service.* Federal financial participation is available under this section only for services provided to:

(1) A child or relative who is receiving aid under the plan and to any essential person living in the same household as such relative and child.

(2) The groups defined in § 1392.52; current applicants for aid, former and potential applicants or recipients and other individuals requesting information and referral service only. In respect to any child or relative who has formerly been an applicant for or recipient of aid, counseling and casework services may be provided. Other services may be provided only to those children or relatives who have received aid within the previous 2 years or who qualify under the definition of potential applicants or recipients.

(c) *Sources for furnishing services.* Federal financial participation is available under this section for services furnished:

(1) By State or local agency staff, i.e., full- or part-time employed staff; and volunteers, or

(2) By purchase, contract, or other cooperative arrangements with public or private agencies or individuals, provided that such services are not available without cost from such sources.

(d) *Provisions governing costs of certain services.* (1) Medical and assistance costs. Federal financial participation under this section will not be available in expenditures for subsistence and other assistance items or for medical or remedial care or services, except:

(i) For subsistence and medical care when they are provided as essential components of a comprehensive service program of a facility and their costs are not separately identifiable, such as, in a rehabilitation center, a day care facility or a maternity home;

(ii) For medical and remedial care and services as part of family planning services;

(iii) For required medical examinations for persons caring for children under agency auspices, when not otherwise available or not included in purchase arrangements;

(iv) For identifying medical problems of children in child care facilities; or

(v) For medical diagnosis and consultation when necessary to carry out service responsibilities, e.g., for recipients under consideration for referral to training and employment programs.

(2) Vocational rehabilitation services Federal financial participation is not available in the costs of providing services for the disabled as defined in the Vocational Rehabilitation Act except pursuant to an agreement with the State agency administering the vocational rehabilitation program. This applies to provision of services by staff of the agency and purchase.

(3) Federal financial participation is available in the costs of the following:

(i) Staff in providing services related to foster care, i.e., recruitment, study, and approval of foster family homes, services to children in foster care and their parents, and work with foster parents and staff of child-caring institutions. Vendor payments for foster care are assistance payments and are, therefore, not subject to the service rate of Federal financial participation.

(ii) Work related to child care resources to be used by the agency, i.e., the costs of staff engaged in the development, recruitment, study, approval, and subsequent evaluation of out-of-home child care resources, except the costs of staff primarily engaged in the issuance of licenses or in the enforcement of standards; study, approval, and subsequent evaluation of in-home care arrangements; and in the provision of technical assistance to improve the quality of child care.

(iii) Services provided in behalf of families and children, e.g., community planning, assuring accessibility to entitled service resources; and studies of service needs and results.

(iv) Certain services to assist individuals to achieve employment and self-sufficiency:

(A) Payments for additional expenses of individuals that are attributable to their participation in training or work experience projects, e.g., transportation, lunches, uniforms. (Not applicable to assistance recipients earning wages, including employment or on-the-job training, or on special work projects under Work Incentive Program, since such expenses will be deducted in determining net income.)

(B) Medical examinations that are necessary to determine physical and mental health conditions for training or employment.

(C) Education and training as provided in § 1392.51(c)(3).

(v) Agency staff engaged in locating and planning with deserting or putative fathers; assessing potentials and determining appropriate actions; developing voluntary support; assisting relatives to file petitions for the establishment of paternity; reuniting families; and cooperative planning with appropriate courts and law enforcement officials.

(e) *Federal financial participation for child care services.* Child care expenditures for WIN participants must be charged as a service expenditure and separately identified since Federal funds for this purpose come from a separate appropriation. Child care expenditures for other AFDC cases may be charged as a service expenditure or included as a financial assistance expenditure subject to matching under the title IV–A formula, depending on how the State plan specifies. Where child care is provided as a service the payment may be made either to the vendor of the service directly or to the recipient for payment by him. In either case documentation is needed in the form of statements of the type and quantity of services rendered for each recipient (receipted by vendor when the service payment is made directly to the recipient) to establish the fact that the expenditure was for services.

(f) *Rates and amounts of Federal financial participation (FFP) and cost allocation requirements for Puerto Rico, the Vrigin Islands, (delete) Guam, and the Commonwealth of the Northern Mariana Islands.* (1) FFP at the 60 percent rate is available for the service costs identified in paragraphs (d) and (c) of this section; and for training and staff development including costs of training provided to welfare staff by courts or law enforcement officials.

(2) FFP at the 50 percent rate is available for emergency services.

(3) For family planning services and referral for participation under the Work Incentive Program for any fiscal year beginning on or after July 1, 1967, the Federal share to:

(i) Puerto Rico shall not exceed $2 million.

(ii) The Virgin Islands shall not exceed $65,000.

(iii) Guam shall not exceed $90,000. Notwithstanding the limitations in paragraph (a)(3) of this section any funds which may become available under § 1396.52(c)(3) of this chapter may be used for any service activities under titles I, IV-A, X, XIV or XVI (AABD).

(4) Federal financial participation at the 50% rate is available in the costs of income maintenance activities and emergency assistance.

(5) Salaries and related expenses of staff who perform both service and income maintenance functions must be allocated between the two types of activities as a basis for claiming FFP at the rates specified in paragraphs (f) (1), (2) and (4) of this section. For purposes of this paragraph, income maintenance functions means all activities related to basic maintenance, i.e., determination of initial and continuing eligibility for financial and medical assistance and for food stamps. (*Provided.* That all members of the household are included in the assistance unit) and the authorization for purchase of coupons if prepared by the worker who determines eligibility for food stamps; furnishing of checks, warrants or food stamps for which the family is eligible; maintaining the case in payment or certification status; providing emergency services; and performing other related activities required in the administration of the income maintenance program.

(g) *Federal financial participation in the work incentive program.* (1) Federal financial participation at the rate of 90 percent is available in the costs of self-support services (and the related administrative costs) provided by the separate administrative units in accordance with 45 CFR 224.15(c).

(2) The amount of Federal funds available for Federal financial participation at the rate of 90 percent, as appropriated by Congress, will be apportioned among the States according to methods prescribed by the Secretary.

(3) This paragraph does not apply to Puerto Rico, the Virgin Islands, (delete) Guam, and the Commonwealth of the Northern Mariana Islands.

§ 1392.62 Federal financial participation; CWS.

(a) *Federal share.* The Federal share of service programs under title IV-B shall be at the rate specified in or promulgated pursuant to section 423 of the Act.

(b) *Persons eligible for service.* (1) Federal financial participation under title IV-B is available to serve all families and children in need of child welfare services without respect to whether they are receiving AFDC.

(2) Expenditures for care of children it, foster family homes, group homes, institutions, family day care homes or day care centers, or for care of unmarried mothers in foster family homes, group homes, institutions, or independent or other living situations, shall be for those children or unmarried mothers for whom the public welfare agency, through its child welfare services program, accepts responsibility for providing or purchasing such care. This responsibility includes; determining the need for such care and that the type of care is in the best interest of the child and his family or of the unmarried mother, determining the ability of the family to contribute

to the cost of care; and developing a plan for continuing supervision of the child or unmarried mother in care.

(c) *Sources of services.* Federal financial participation is available under this section for services furnished:

(1) By State or local agency staff, i.e., full- or part-time employed staff, and volunteers, or

(2) By purchase, contract, or other cooperative arrangements with public or private agencies or individuals, provided that such services are not available without cost from such sources.

(d) *Kinds of expenses included.* Federal financial participation is available for expenditures for the following purposes: personnel services; professional education; institutes, conferences and short-term courses; foster care of children; care of unmarried mothers; day care of children; purchase of homemaker services, specialized services; return of runaway children; research and special facilitative services; merit system costs; advisory committees; membership fees; supplies, equipment and communication; and occupancy and maintenance of space.

§ 1392.63 Relationship of costs under Parts A and B of title IV.

(a) There must be methods of allocating the costs of providing services under the child welfare services program and providing services under the AFDC program.

(b) Service expenses that jointly benefit title IV-A and B programs may be allocated between them using any reasonable basis or may be charged entirely to IV-A, or B if they are considered to be of primary benefit to such program. The title IV-A program may be considered to be primarily benefited if the number of AFDC children served represents at least 85 percent of the total children served. The 85 percent computation may be based on local agency totals or on statewide totals.

(c) The one exception to the policy expressed above in paragraph (b) of this section pertains to educational leave. States can elect to charge educational leave totally either to AFDC under title IV-A, or child welfare services under title IV-B, without regard to the proportion of time devoted to either program before or after educational leave. The only condition to be met is that the person returning from educational leave be employed in the single organizational unit supervising or providing all services for families and children under title IV-A and/or title IV-B of the Social Security Act, as amended. Where a single organization unit has not been established an allocation of costs must be made in accordance with existing policy.

§ 1392.64 Provisions common to title IV-A and B.

(a) *General.* Federal financial participation is available only if costs are incurred in accordance with the grants administration requirements of 45 CFR Part 74 and where appropriate, allocated in accordance with the cost allocation provisions of 45 CFR 1395.2.

(b) *Restrictions on State's share.* The State's share in claiming FFP under both Parts A and B of title IV shall be in accordance with 45 CFR 1396.53.

§ 1392.65 Amount of Federal funding.

(a) The amount of Federal funds available for services under title IV-A is dependent upon the availability of and extent of matching State funds, except as stated in § 1392.61(f), for Puerto Rico, Virgin Islands, (Delete), Guam, and the Commonwealth of the Northern Mariana Islands.

(b) The amount of Federal funds under title IV-B may not exceed the amount available under the allotment formula prescribed by law. The availability of these funds is dependent upon State expenditures, matched according to the formula prescribed by law.

§ 1392.66 Nonexpendable personal property: Conditions for FFP.

Federal financial participation in State claims for nonexpendable personal property is governed by 45 CFR 1396.93.

Subpart D—Other Provisions Governing Child Welfare Services Programs

§ 1392.70 Meaning of terms.

Unless the context otherwise requires, the following terms, as used in this subpart have the following meanings:

(a) "Act" means title IV, part B of the Social Security Act, 42 U.S.C. 601-626.

(b) "HDS" means the Office of Human Development Services in the Department of Health and Human Services.

(c) "State" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

(d) "State agency" means the public welfare agency of a state which has been designated as the single agency for the purposes of administering or supervising the administration of a State plan for child welfare services.

(e) "Local agency" means the public welfare agency of a political subdivision of a State which is engaged in the administration of that part of the State plan that pertains to the locality and which, in such administration, is under the supervision of the State agency.

(f) "Offical forms" means forms supplied by HDS to State agencies for submitting required information and requests.

(g) "Children" means those individuals under the age of 21 years who are homeless, dependent, neglected or in danger of becoming delinquent regardless of the fact that they also may fall into other categories, and for whom services under the State program of child welfare services are authorized by State law.

(h) "Child welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purposes set forth in section 425 of the Act.

(i) "Establishing, extending, and strengthening" means stabilizing, increasing where necessary and desirable the applicability of, and making stronger the State program of child welfare services and undertaking new child welfare services where necessary and desirable for meeting the unmet needs of children.

(j) "State plan" means the plan developed jointly by the State agency and HDS for establishing, extending and strengthening the State program of child welfare services, taking into account the conditions of such program, the needs of children and the potential for meeting the unmet needs of children through Federal financial participation. It includes the basic plan and the annual budget pursuant to § 1392.71.

§ 1392.71 The State plan; the annual budget; submission, approval, duration, purpose, revision.

(a) *Submission, approval, duration.* Upon adoption by the State of a State plan (including a basic plan and an annual budget jointly developed by the State agency and HDS, it shall be certified by a duly authorized officer of the State agency and submitted to HDS for approval. Upon approval the State plan shall be in effect for the purposes of the Act. The basic plan, as approved and as it may be revised in accordance with paragraph (d) of this section from time to time, shall remain in continous effect without periodic renewal. The annual budget, as it may be revised in accordance with paragraph (d) of this section during the fiscal year, shall be in effect only for the fiscal year for which it is approved.

(b) *Basic plan, content, purpose.* The basic plan, as a part of the State plan, shall be a narrative description, together with appropriate illustrations, of the total State program of child welfare services. It shall be developed in accordance with instructions as to form and subject matter issued by HDS. A basic plan which is in effect in accordance with paragraph (a) of this section shall be the State plan for the purpose of allotment to the State of sums appropriated under the Act. From time to time, as determined by HDS, a new plan may be required of all States.

(c) *Annual budget, content, purpose.* The annual budget, as a part of the State plan, shall be jointly developed annually for the fiscal year and submitted by the State agency on official forms to HDS for approval. It shall be a statement certified by a duly authorized officer of the State agency, which includes proposed and estimated expenditures for carrying out those items described in the basic plan which the State agency and HDS have agreed upon as establishing, extending, and strenthening the State program of child welfare services for the fiscal year. The annual budget, upon approval, and subject to applicable provisions of the Act, the regulations in this subpart and the basic plan, shall be the State plan for the fiscal year for purposes of determining the amount of the Federal share of the total sum expended thereunder, and making payments to the State out of the sums allotted to it for the fiscal year.

(d) *Revision.* The State plan shall be revised whenever necessary because of any material change in the program provided by the plan, in the organization, policies or operations relating to the program, or any changes in pertinent law, and as may otherwise be deemed necessary by HDS. Revisions are subject to joint development by the State agency and HDS, and shall be submitted to HDS, certified by a duly authorized officer of the State agency, for approval. Revisions shall be incorporated into the State plan and shall be in effect for the purposes of the Act upon, and in accordance with, the approval. Except when it is not feasible for a revision to the annual budget to be submitted to HDS a reasonable time in advance of being carried out by the State agency, approval of revisions shall be prospective.

§ 1392.72 [Reserved]

§ 1392.73 Allotment of Federal funds.

Section 421 of the Act prescribes the following method for determining a State's allotment for State child welfare services for each fiscal year:

(a)(1) From the sums appropriated for each fiscal year for grants to States for State child welfare services, each State shall be entitled to an allotment of $70,000, and

(2) Each State shall be entitled to an allotment from the remainder of the sums appropriated of an amount which bears the same ratio to such remainder as the product of the population of such State under the age of 21 and its allotment percentage bears to the sum of the corresponding products of all the States.

(b) The "allotment percentage" for any State shall be 100 per centum less the State percentage, which is that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and the allotment percentage for Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands shall be 70 per centum.

§ 1392.74 Payments from allotments.

Payments to a State from the sums available from its allotments under section 421 of the Act shall be computed and made pursuant to sections 422 and 423 of the Act, as follows:

(a) For any fiscal year the "Federal share" for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States except that the Federal share shall in no case be less than 33⅓ per centum or more than 66⅔ per centum, and the Federal share for Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands shall be 66⅔ per centum.

(b) Estimates: Prior to the beginning of each fiscal quarter an authorized official of the State agency should submit to HDS on official forms an estimate of the amount of the Federal share which it will require from the sums available from its allotments under section 421 of the Act in carrying out the annual budget during such quarter.

(c) Payments: On the basis of the annual budget and the quarterly estimates the State agency submits, the

Commissioner of the Administration for Children, Youth, and Families shall issue a grant award to each State. The award shall be made from the sums available from each State's allotment for the Federal share of the estimate, reduced or increased by any overpayment or underpayment to the State for any prior quarter not previously adjusted.

(d) The Departmental Federal Assistance Financing System (DFAFS) shall advance funds for the grant to the State under the procedures in Subpart K of 45 CFR Part 74, Treasury Circular No. 1075, and the DFAFS Recipient Users Manual.

§§ 1392.75—1392.76 [Reserved]

§ 1392.77 Fiscal year to which expenditures chargeable.

An expenditure under an annual budget will be charged to that Federal fiscal year in which the obligation was incurred: *Provided,* That obligation incurred in 1 fiscal year for services and expenses continuing into the next fiscal year may be charged to the allotment for either year when consistent with the plan and with State laws, rules, and regulations governing the expenditure of State appropriated funds. Such budgets and expenditure reports as are required by HDS will be prepared on this basis. For the purposes of this section and § 1392.78, "obligation" shall mean only bona fide encumbrances or commitments which are supported by contracts or other evidence of liability consistent with State purchasing procedure.

§ 1392.78 Liquidation of obligations.

All obligations of the State agency incurred in carrying out the annual budget shall be liquidated within 2 years after the close of the fiscal year in which the obligation was incurred unless otherwise authorized by HDS.

§ 1392.79 [Reserved]

§ 1392.80 Apportionment of costs.

Where an expenditure is made for the benefit of this program and any other programs, the amount to be charged as a cost of carrying out the State plan shall be governed by the cost principles specified by Subpart Q of 45 CFR Part 74.

§ 1392.81 [Reserved]

§ 1392.82 Effect of payments.

Neither approval of the State plan nor any payments to the State pursuant thereto shall be deemed to waive the failure of the State to observe before or after such administrative action any Federal requirements or the right or duty of the Federal Government to withhold funds by reason thereof.

§ 1392.83 Promulgation.

The Federal shares and the allotment percentages shall be promulgated between October 1 and November 30 of each even-numbered year, as required by and with the effect given by section 423(c) of the Act.

§ 1392.84 Reallotment of funds.

Under section 424 of the Act the amount of any allotment to a State under section 421 of the Act for any fiscal year which the State certifies will not be required for carrying out the State plan shall be available for reallotment to other States in accordance with the following:

(a) On or before dates fixed by HDS each State shall certify on an official form whether or not it will require the full amount of its allotment for carrying out the State plan for the fiscal year. If it is certified that the full amount will not be required, the certification shall contain the amount of the allotment not so required. If it is certified that the full amount will be required, and if the State has need for and will be able to use sums in excess of its allotment in carrying out the State plan, the State agency may so state in a letter to HDS together with an estimate of the amount of such sums.

(b) The total amount certified by States as not being required for carrying out their State plan for the fiscal year shall be tentatively apportioned among those States which have stated need for and capacity to use sums in excess of their allotments in carrying out their plans: *Provided,* That in no event shall the amount of such apportionment to a State exceed the estimated amount of its request under paragraph (a) of this section, and any excess shall be tentatively apportioned among the remaining States. HDS promptly shall notify such States of such tentative apportionment. Each such State, after taking into consideration the amount of the tentative apportionment to it, shall notify HDS on or before a date fixed by HDS whether or not it desires to continue to be considered for purposes of the reallotment.

(c) In the event that all such States notify HDS that they desire to continue to be considered for purposes of the reallotment, each State shall develop jointly with HDS a revision to the State plan covering the amount tentatively apportioned to it.

(d) In the event that a State notifies HDS that it does not desire to continue to be considered for purposes of the reallotment the tentative apportionment shall be recomputed without the withdrawing State. Each of the remaining States shall be notified of the recomputation and shall develop jointly with HDS a revision to the State plan covering the amount tentatively apportioned to it under the recomputation.

(e) Reallotment shall be made among those States which have plan revisions pursuant to paragraph (c) or (d) of this section and which HDS determines (1) have need in carrying out their State plan for the additional funds and (2) will be able to use such additional funds during the fiscal year.

(f) In computing the amount of the reallotted funds to each State consideration shall be given to the population under the age of 21 and the per capita income of each such State as compared with the population under the age of 21 and the per capita income of all such States participating in the reallotment.

(g) Any amount reallotted to a State shall be deemed part of its allotment under section 421 of the Act.

§ 1392.85 [Reserved]

Subpart E—Child Abuse and Neglect: Provisions Applicable Under Titles IV-A and IV-B of the Social Security Act

1392.90 Scope.

This subpart contains provisions to implement the requirements of paragraph (3) of Section 4(b) of Pub. L. 93-247, the Child Abuse Prevention and Treatment Act of January 31, 1974. The State plan requirements are applicable to all IV-B agencies and to title IV-A agencies that administer programs or projects related to child abuse and neglect.

§ 1392.91 Definitions.

As used in this subpart:

(a) "Act" means the Social Security Act.

(b) "Child" means a person under the age of eighteen.

(c) "Child abuse and neglect" means harm or threatened harm to a child's health or welfare.

(d) "Harm or threatened harm to a child's health or welfare" can occur through: Non-accidental physical or mental injury; sexual abuse as defined by State law; or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter: *Provided, however,* That when a parent or guardian legitimately practicing his religious beliefs fails to provide specified medical treatment for a child, such failure alone shall not be considered neglect.

(e) "A person responsible for a child's health or welfare" includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution.

§ 1392.92 State plan requirements.

A State plan under title IV-B of the Act and under title IV-A, if the single State agency for IV-A administers any program or project related to child abuse or neglect, shall:

(a) *State laws or legally binding administrative procedures.* Include a certification by the State Attorney General that there are in effect State laws or legally binding administrative procedures for the reporting of known or suspected instances of abuse or neglect of children up to age 18, for investigation of such reports, and for action pursuant to the results of investigation.

(b) *Provision for reporting.* Certify that the State or the State or local agency administering the program under Part A or B of title IV of the Act:

(1) Provides for the reporting of known or suspected instances of child abuse and neglect;

(2) Complies with all State laws and legally binding administrative procedures regarding such reporting; and

(3) If it enters into agreement for purchase of services or for the performance of any aspect of a program or project related to child abuse or neglect, includes a requirement for the provider to report instances of child abuse or neglect.

(c) *Prompt investigation.* Provide that, upon receipt of a report of known or suspected instances of child abuse or neglect, regarding a child covered by the State's child welfare services program under title IV-B, or a program or project related to child abuse or neglect administered or supervised by the title IV-A agency, the State or local agency will promptly initiate an investigation to substantiate the accuracy of the report, unless, under State law or legally binding administrative procedures, such responsibility is exclusively reserved to some other agency, or unless the report involves the acts or omissions of the State or local agency itself. In the latter case, the investigation must be conducted by a different agency or organization.

(d) *Action upon a finding of abuse or neglect.* Provide that, upon a finding of abuse or neglect resulting from an investigation required pursuant to paragraph (c) of this section, the State or local agency will take immediate steps to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care, who may be in danger of abuse or neglect.

(e) *Confidentiality of records.* Certify that the State or local agency has in effect methods to preserve the confidentiality of all records concerning reports of child abuse and neglect in order to protect the rights of the child, and his parents or guardians, in accordance with 45 CFR 1391.3. For purposes of this section, the provisions of 45 CFR 1391.3 are applicable to title IV-B.

(f) *Cooperation among agencies.* Certify that law-enforcement officials, courts of competent jurisdiction, and appropriate State agencies providing human services in relation to prevention, identification, and treatment of child abuse and neglect cooperate with the State or local agency in carrying out the IV-B program and any projects or programs administered under title IV-A.

SUBCHAPTER K—SOCIAL SERVICES FOR INDIVIDUALS AND FAMILIES UNDER TITLE XX OF THE SOCIAL SECURITY ACT

PART 1397—STANDARD SETTING REQUIREMENTS FOR MEDICAL AND NONMEDICAL FACILITIES WHERE SSI RECIPIENTS RESIDE

Sec.
1397.0 Scope.
1397.1 Definitions.
1397.10 Responsibilities of States in identifying facilities and designating standard-setting authorities, effective October 1, 1977.
1397.20 Responsibilities of designated standard-setting authorities.
1397.30 State certification to the Department of Health and Human Services.

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

SOURCE: 45 FR 56728, Aug. 25, 1980, unless otherwise noted.

§ 1397.0 Scope.

This part requires States, effective October 1, 1977, to create or designate one or more State or local authorities to establish, maintain, and ensure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which, as determined by the State, a significant number of recipients of Supplemental Security Income (SSI) benefits resides or is likely to reside. SSI residents who live in relevant facilities which violate any of the standards will be subject to a reduction in their SSI payments by the Social Security Administration. The reduction will be in an amount equal to any State supplementary benefit or other payment made by the State for any medical or remedial care provided them by the facility.

§ 1397.1 Definitions.

For purposes of this part:

(a) *Any category of institutions, foster homes, and group living arrangements* means residential facilities which provide both room and board *and* continuous protective oversight to the residents and are:

(1) Non-medical or medical facilities of any size (other than those certified for participation in the Medicaid or Medicare programs) which are publicly or privately operated on a nonprofit for-profit basis.

(b) *Medical or remedial care* means care directed toward the correction or amelioration of a medical condition which has been diagnosed as such by a licensed medical practitioner operating within the scope of medical practice as defined by State law, and the care is provided by or under the direct supervision of a medical practitioner or other health professional licensed by the State or credentialed by the appropriate professional organization.

§ 1397.10 Responsibilities of States in identifying facilities and designating standard-setting authorities, effective October 1, 1977.

(a) Each State shall determine the kinds of residential facilities (as defined under § 1397.1) in which a significant number of SSI recipients resides or is likely to reside.

(b) Each State shall create or designate one or more State or local authorities to establish, maintain, and ensure the enforcement of any standards for the residential facilities identified in accordance with paragraph (a) of this section.

§ 1397.20 Responsibilities of designated standard-setting authorities.

Each standard-setting authority shall, effective October 1, 1977:

(a) *Establish standards.* (1) The standards shall be appropriate to the needs of the SSI recipients residing in the facilities and to the character of the facilities involved. In addition, they shall govern such matters as:

(i) Admission policies (including a continuous needs assessment and referral to appropriate resources);

(ii) Safety;

(iii) Sanitation (cleanliness and hygienic procedures); and

(iv) Protection of civil rights (under the United States Constitution, the

Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other relevant provisions of Federal and State laws).

If a standard-setting authority has standards already in place, including those listed in paragraphs (i) through (iv) of paragraph (a)(1) of this section, the standards meet the requirement.

(2) Under this requirement, the authority may provide for waivers of a standard under specified criteria.

(3) The authority shall notify the public and providers about the need for affected facilities to meet its standards.

(4) The authority shall provide the State's title XX agency, annually (as arranged with that agency), with a summary of each standard for each kind of facility, for publication in the title XX services plans.

(b) *Established procedures for enforcing the standards.* The enforcement procedures shall include:

(1) Periodic inspection of facilities;

(2) Provision of technical assistance; and

(3) Use of a warning system which provides for an opportunity for a deficient facility to comply and for the residents to move out if the facility fails to do so. The standard-setting authority shall establish specific time periods:

(i) For a deficient facility to carry out a plan approved by the standard-setting authority to correct any violation of a standard which cannot be waived; and

(ii) For the standard-setting authority, if the facility fails to comply, to arrange for informing in writing all residents of the facility (including, where appropriate, the families, guardians, or representative payees of SSI residents) of the standard which the facility does not meet, and of the time period during which residents may relocate if they wish before the authority reports the deficient facility to the Social Security Administration. The standard-setting authority shall also provide all residents with a list of approved facilities and agencies which will help them move if they wish. The purpose is to let the residents know they do not have the protection of the standard, and to give them time and assistance to move if the absence of the standard endangers them or penalizes their SSI benefit.

(c) *Report deficient facilities to the Social Security Administration.* (1) At the conclusion of the relevant time period(s) given a deficient facility to correct violation of a standard or for residents to move out of a facility, as described in paragraph (b)(3) of this section, each designated standard-setting authority shall report to the appropriate Regional Office of the Social Security Administration the name and address of any facility which no longer meets the standards and the effective date of the violation. The purpose is to enable the Social Security Administration to reduce SSI benefits to SSI residents living in a facility in violation of standards, in accordance with the requirements of Section 505 of Pub. L. 94-566, "The Unemployment Compensation Amendments of 1976."

(2) If and when a deficient facility again meets the standards, the standard-setting authority shall notify the Social Security Administration of the effective date of its approval of the facility.

(d) *Maintain and make records available*—(1) *Maintenance of records.* Each authority shall:

(i) Keep a record of the details of each violation of a standard by a facility; and

(ii) If a standard is waived, maintain a record including the name and address of each facility granted a waiver, the standard waived, and the justification for waiving it.

(2) *Availability of records to the public.* Each authority shall make available without charge to interested individuals a single copy of:

(i) A complete set of standards for each type of facility;

(ii) The procedures used in the State to insure the enforcement of standards;

(iii) The list of facilities (name and address) that have been granted waivers of each standard, including the justification for the waiver; and

(iv) The list of facilities (name and address) found in violation of a standard, including the details of each violation.

§ 1397.30 State certification to the Department of Health and Human Services.

(a) Each State shall certify annually to the HHS, official in the Regional Office who receives title XX plans, that:

(1) It has created or designated an authority or authorities to establish, maintain, and insure the enforcement of standards, in accordance with §1397.10;

(2) It has made available, without charge, information about full standards, enforcement proceedings, and, where applicable, waivers of standards, and violations of standards by specific facilities, as required under §1397.20(d)(2);

(3) It has published in the State's title XX proposed and final annual services plans:

(i) A summary of the content of each standard established for each type of facility, in accordance with § 1397.20(a); and

(ii) The name and address of each designated standard-setting authority from which interested individuals may obtain, without charge, the information about full standards, enforcement procedures, waivers of standards, and violations, in accordance with § 1397.20(d); and

(4) Each standard-setting authority has reported to the relevant Social Security Administration Regional Office the names and addresses of facilities which are in violation of standards, in accordance with § 1397.20(c):

(b) The certification shall be in the form of a factual statement signed by the Chief Executive of the State or his designee and submitted within the first quarter following the beginning of a State's title XX program year.

CHAPTER XVI—LEGAL SERVICES CORPORATION

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PART 1600—DEFINITIONS

§ 1600.1 Definitions.

As used in these regulations, Chapter XVI, unless otherwise indicated, the term

"Act" means the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*.

"Appeal" means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

"Attorney" means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered.

"Corporation" means the Legal Services Corporation established under the Act.

"Director of a recipient" means a person directly employed by a recipient in executive capacity who has overall day-to-day responsibility for management of operations by a recipient.

"Eligible Client" means a person or group determined to be eligible for legal assistance under the Act.

"Employee" means a person employed by the Corporation or by a recipient.

"Fee Generating Case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

"Legal Assistance" means the provision of any legal services consistent with the purposes and provisions of the Act.

"Outside Practice of Law" means the provision of legal assistance to a client who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluations.

"President" means the President of the Corporation or the President's designee.

"Public Funds" means funds received from a Federal, State, or local government, or any instrumentality of a government, or from an independent organization that expends funds received from a government.

"Recipient" means any grantee or contractor receiving financial assistance from the Corporation under Section 1006(a)(1)(A) of the Act.

"Staff Attorney" means an attorney more than one half of whose annual professional income is received from a recipient that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

"Tribal Funds" means funds received from an Indian tribe, or from a private foundation, for the benefit of an Indian tribe.

(Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*)

[41 FR 18511, May 5, 1976]

PART 1601—BY-LAWS OF THE LEGAL SERVICES CORPORATION

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AUTHORITY: Sec. 1008(e), 88 Stat. 387 (42 U.S.C. 2996g(e)).

SOURCE: 40 FR 52022, Nov. 7, 1975, unless otherwise noted.

Subpart A—Nature, Powers, and Duties of Corporation; Definitions

§ 1601.1 Nature of the corporation.

Legal Services Corporation is the corporation established by section 1003 of the Legal Services Corporation Act, 42 U.S.C. 2996b. The Act establishes the Corporation in the District of Columbia as a private nonmembership, nonprofit corporation for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance. Except as otherwise specifically provided in the Act, the Corporation is not considered a department, agency, or instrumentality of the United States Government.

§ 1601.2 Powers and duties.

The powers and duties of the Corporation are as set forth in the Act. The powers of the Corporation include, to the extent consistent with the Act, the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, D.C. Code Title 29, Chapter 10, other than the power to cease corporate activities.

§ 1601.3 Definitions.

As used in these By-laws, except where the context otherwise requires—

(a) "Act" means the Legal Services Corporation Act, 42 U.S.C. § 2996–2996*l*, which was added to the Economic Opportunity Act of 1964 as Title X thereof by an Act of Congress cited as the Legal Services Corporation Act of 1974, Pub. L. 93-355, approved July 25, 1974, 88 Stat. 378, as amended.

(b) "Board" means the Board of Directors of the Corporation.

(c) "Corporation" means the Legal Services Corporation established by section 1003 of the Act, 42 U.S.C. 2996b;

(d) "Director" or "member of the Board" means a voting member of the Board of Directors appointed by the President of the United States;

(e) The pronouns "he," "him," and "his" mean, respectively, "he or she," "him or her," and "his or her";

(f) "Member of the immediate family" means, with respect to any individual, a spouse, child, parent, brother, or sister of such person, or a spouse or relative of any of the foregoing who has the same home as such person;

(g) "Person" means an individual, corporation, association, partnership, trust, or other entity;

(h) "Recipient" means a grantee, contractee, or recipient of financial assistance described in clause A of section 1006(a)(1) of the Act;

(i) "Telegraph" includes any means of record communication.

[40 FR 52022, Nov. 7, 1975, as amended at 45 FR 58363, Sept. 3, 1980]

Subpart B—Offices and Agents

§ 1601.4 Principal office.

The Corporation shall maintain its principal office in the District of Columbia.

§ 1601.5 Agent.

The Corporation shall maintain in the District of Columbia designated agent to accept service of process for the Corporation.

§ 1601.6 Other offices and agents.

The Corporation may also have offices and agents at such other places, either within or without the District of Columbia, as the business of the Corporation may require.

Subpart C—Board of Directors

§ 1601.7 General powers.

The property, affairs, and business of the Corporation shall be under the direction of the Board, subject to the provisions of the Act.

§ 1601.8 Number, terms of office, and qualifications.

(a) The Board shall consist of eleven voting members and the President of the Corporation *ex officio.* The voting members shall be appointed by the President of the United States by and with the advice and consent of the Senate. No more than six of the voting members shall be of the same political party. A majority of the voting members shall be members of the bar of the highest court of a state. None of the voting members shall be a full-time employee of the United States.

(b) The term of office of each voting member of the Board shall be three years, except that five of the members first appointed have been designated by the President of the United States to serve for a term of two years. Each member of the Board shall continue to serve until his successor is appointed and qualified. The term of the initial members of the Board shall be computed from July 14, 1975, the date of the first meeting of the Board. The term of each member of the Board other than the initial members shall be computed from the date of termination of the preceding term. Any member of the Board appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member of the Board shall be reappointed to more than two consecutive terms immediately following such member's initial term.

§ 1601.9 The Chairman of the Board.

The initial Chairman of the Board, during the period July 14, 1975 to July 13, 1978, shall be a member of the Board initially designated as Chairman by the President of the United States or, if he should resign or otherwise vacate his office or his Board membership, the member subsequently so designated by the President of the United States. Thereafter, annually or at such other time as there may be a vacancy in this office, the Board shall elect a Chairman of the Board from among its voting members who shall serve in such capacity until his successor has been duly elected and qualified, or until he shall resign or otherwise vacate his office or his Board membership. The Chairman of the Board shall, if present, preside at all meetings of the Board, shall carry out all other functions required of him by the Act and these By-laws, and shall perform such other duties as from time to time may be assigned to him by the Board.

§ 1601.10 Qualification.

A person shall be deemed to have qualified as a Director, or as the Chairman of the Board, when upon his appointment or selection, as the case may be, he has affirmed or executed a statement, in a form provided by the Board, to discharge his duties faithfully.

§ 1601.11 Outside interests of directors.

(a) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years. For the purposes of this paragraph (1) a member of the Board shall be deemed "associated" with a firm or organization if he, (i) is serving or has served within the past two years as a director, officer, trustee, employee, consultant, attorney, agent, or partner thereof, or in any of such other capacities as the Board may from time to time determine, (ii) is negotiating or has any arrangement concerning prospective employment therewith, or, (iii) has or has had within the past two years any direct or indirect financial or ownership interest therein; and (2) the term "member of the Board" includes a member of the immediate family of a member of the Board. If a Director violates this paragraph in connection with any transaction, the validity of the transaction, unless void by law or voidable by the Corporation, shall not be affected by the violation, but the Director by law may be liable to the Corporation for damages.

(b) Pursuant to procedures to be established by the Board from time to time, each member of the Board, upon assuming office and at least annually thereafter, shall file with the Secretary a statement identifying any firm or organization with which he is then or has been within the past two years associated (as defined in paragraph (a) of this section) and the nature of the association. In the event the association is a result of a financial or ownership interest, that fact shall be reflected in the statement, but the member need not reveal the degree of financial interest. Such statements shall be available for public inspection.

§ 1601.12 Removal.

(a) A Director may be removed, by a vote of seven members at a meeting of the Board, for persistent neglect of or inability to discharge duties, for malfeasance in office, or for offenses involving moral turpitude, and for no other cause.

(b) When a Director shall fail to appear at three consecutive meetings of the Board or at one-half of the meetings held during a two-year period, the Secretary shall notify him in writing that the agenda for the next meeting of the Board will include the question whether he should be removed for persistent neglect of or inability to discharge duties.

(c) Except as provided in paragraph (b) of this section, the Board shall consider whether a Director shall be removed only when five or more Directors have stated in writing that they believe there is reasonable cause for such action, giving specific allegations in support of such belief.

(d) A Director may not be removed unless (1) notice of the basis of removal has been given to such Director at least thirty days before a vote is taken concerning his removal and (2) the Director has been afforded the opportunity to contest his removal by making written submissions to the other members of the Board and by appearing in person, with or without counsel present, at the meeting at which the vote concerning removal is taken.

§ 1601.13 Resignation.

A Director may resign at any time by giving written notice of his resignation to the President of the United States and to the President of the Corporation. Notice of a resignation shall be posted at the offices of the Corporation in an area to which the public has access. A resignation shall take effect at the time received by the President of the United States unless another time is specified therein. The acceptance of a resignation shall not be necessary to make it effective.

§ 1601.14 Compensation.

Directors shall be entitled to received compensation at appropriate rates prescribed by the Board, not in excess of the per diem equivalent of the rate of level V of the Executive Schedule specified from time to time in Section 5316 of Title 5, United States Code, for their services as members of the Board or of any Committee thereof and reimbursement for travel, subsistence, and other expenses necessarily incurred in connection therewith. A Director shall not serve the Corporation in any other capacity or receive compensation for such services, except as authorized by the Board. In no event shall a Director receive compensation in more than one capacity.

[45 FR 58363, Sept. 3, 1980]

Subpart D—Meetings of Directors

§ 1601.15 Regular meetings.

(a) Regular meetings of the Board shall be held at least four times a year, on the first Friday of March, June, October, and December, if not a legal holiday or, if a legal holiday then on the next business day following, at 10 a.m, or at such other date and time as shall be determined by a majority of the members of the Board. Such regular meetings shall held in the District of Columbia unless a majority of the members of the Board otherwise determine. Notice of the place of a regular meeting shall be mailed to each Director at least seven days before the date of the meeting unless a majority of the members determines that Corporation business requires a meeting on fewer than seven days notice. In that event, notice shall be mailed at the earliest practicable time.

(b) In the event a majority of the members of the Board agree to postpone a regular meeting, notice of such postponement shall be mailed to each Director at least five days before the scheduled date for such meeting or shall be telegraphed or delivered at least three days before such scheduled date. In the event a majority of the members of the Board agree to reschedule a regular meeting to a date in advance of the scheduled date for such meeting, notice of such rescheduling shall be mailed to each Director at least twenty-one days before the rescheduled date for such meeting or shall be telegraphed or delivered at least fifteen days before such rescheduled date. Every such notice shall specify the place, day, and hour of the rescheduled meeting.

[40 FR 52022, Nov. 7, 1975, as amended at 45 FR 58363, Sept. 3, 1980]

§ 1601.16 Special meetings.

Special meetings of the Board may be called by the Chairman of the Board or shall be called upon receipt by him of a written request from five or more members of the Board or from the President of the Corporation and four or more members of the Board. Notice of any such meeting shall be mailed to each Director at least seven days before the date on which the meeting is to be held, unless a majority of the members determines that Corporation business requires a meeting on fewer than seven days notice. In that event, notice shall be mailed at the earliest practicable time. Every such notice shall specify the place, day, and hour of the meeting.

[45 FR 58364, Sept. 3, 1980]

§ 1601.17 Notice and waiver of notice.

(a) Notice of a meeting of the Board when mailed shall be deemed given when deposited in the United States mail, postage paid, addressed to the Director at his address appearing on the books of the Corporation or supplied by him for the purpose of this notice. Notice may be delivered at such address to a person having apparent authority to accept such delivery for such Director. Notice by telegraph shall be sent, charges prepaid, to such address.

(b) A waiver of notice of a meeting in writing signed by the Director entitled to such notice, whether before or after the time of such meeting, shall be deemed equivalent to the timely giving of such notice. Attendance of a Director at any meeting shall constitute a waiver by him of notice of such meeting except where he attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

§ 1601.18 Agenda.

For each regular and special meeting, the Chairman of the Board or the President of the Corporation shall cause to be prepared an agenda of matters to be discussed at the meeting, and shall mail the agenda to all Directors with the notice required by §§ 1601.15 and 1601.16. Any matters appearing on the agenda which the Chairman of the Board or the President believes should be discussed in an executive session in accordance with § 1601.22 shall be so noted.

[45 FR 62071, Sept. 18, 1980]

§ 1601.19 General notice.

(a) General notice of any meeting of the Board shall be given at least seven days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In that event, general notice shall be given at the earliest practicable time.

(b) General notice shall include: (1) The time, place, and subject matter of the meeting; (2) whether the meeting or a portion thereof will be closed to public observation; and (3) the name and telephone number of a person designated to respond to requests for information about the meeting. Changes in the information contained in a general notice may be made pursuant to the Corporation's regulations implementing 5 U.S.C. 552b. Notice of such change shall be given in the manner prescribed by this Section and at the earliest practicable time.

(c) General notice shall be posted at the offices of the Corporation in an area to which the public has access and filed for publication in the Federal Register. Reasonable effort shall be made to send the notice to the Chairman of each State Advisory Council appointed pursuant to Section 1004(f) of the Act and to every recipient.

[45 FR 58364, Sept. 3, 1980; 45 FR 62071, Sept. 18, 1980]

§ 1601.20 Organization of directors meetings.

At each meeting of the Board, the Chairman of the Board or, in his absence, a temporary chairman chosen by a majority of the members of the Board present shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board. In the absence from any such meeting of the Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

§ 1601.21 Quorum, manner of acting, and adjournment.

(a) At each meeting of the Board, the presence of six Directors or, if the number of Directors in office is seven or fewer, two-thirds of such Directors shall constitute a quorum for the transaction of business. Except as otherwise specifically provided by law or these By-laws, the vote of a majority of the Directors present at the time of a vote, provided that a quorum is present at such time, shall be the act of the Board. If a quorum is present when a meeting is convened at which an action is subsequently voted upon, the action shall be the valid action of the Board unless a Director suggests the absence of a quorum and there is, in fact, no quorum then present. A Director who is present at a meeting of the Board but is required to abstain from participation in the vote upon any matter, whether he remains in the meeting or withdraws therefrom during the vote, may be counted for purposes of determining whether or not a quorum is present, and if a quorum is present, the vote of a majority of the Directors who are eligible to vote with respect to such matter shall be the act of the Board.

(b) A majority of the Directors present at a duly convened meeting, whether or not they shall comprise a quorum, may temporarily adjourn the meeting. Whenever a meeting is temporarily adjourned to a date not more than five business days following such adjournment, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted thereat otherwise than by an announcement at the meeting at which such adjournment is taken.

(c) Each Director shall be entitled to one vote. Voting rights of Directors may not be exercised by proxy.

§ 1601.22 Public meetings; executive sessions.

All meetings of the Board shall be open to the public unless a majority of the members determines by a recorded vote that consideration of a specific matter should be closed to public observation pursuant to the Corporation's regulations implementing 5 U.S.C. 552b. That part of the meeting closed to the public shall be known as an executive session. The Chairman of the meeting shall announce the subject of the executive session prior thereto.

[45 FR 58364, Sept. 3, 1980]

§ 1601.23 Public participation.

The Board welcomes written and other communication from members of the public. Members of the public may address a meeting of the Board upon invitation of the Chairman of the meeting unless the Board otherwise directs.

[45 FR 58364, Sept. 3, 1980]

§ 1601.24 Minutes.

The minutes of each meeting of the Board, including an executive session, shall record the names of the Directors present, the actions taken, and the result of each vote. If there is a division on a vote, the minutes shall record the vote of each Director. Minutes shall reflect discussions held in executive session, including as much information as possible about such discussions without compromising the purpose for which such meeting was closed to the public. A copy of the minutes of each meeting shall be supplied to each member of the Board in advance of the next meeting and shall be presented for approval by the Board at such meeting. The minutes of each meeting shall be available for inspection by the public in the form supplied to, and in the form approved by, the Directors.

§ 1601.25 Action by directors without a meeting.

Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors and general notice of the proposed action is published in the manner prescribed by § 1601.19 on or before the date when such consents are first solicited. Any such action so taken shall be included on the agenda of the next meeting of the Board for discussion, ratification, or such other action as may be indicated by the circumstances.

Subpart E—Committees

§ 1601.26 Establishment and appointment of committees.

The Board may by resolution of a majority of the Directors in office establish (and thereafter dissolve) such executive, regular, standing, or temporary Committees as the Board may deem appropriate to perform such functions as it may from time to time designate. The authority of any such Committee shall expire at the time specified in such resolution, which shall be no later than two years after its establishment. The Board may appoint Directors to serve on such Committees including one to serve as the chairman, or may delegate to the Chairman of the Board the authority to make such appointments. A person appointed as a member of a Committee shall serve as such only at the pleasure of the Board. The Chairman of the Board shall be an ex officio non-voting member of each Committee.

[45 FR 58364, Sept. 3, 1980]

§ 1601.27 Committee procedures.

(a) Except as otherwise provided in these By-laws or in the resolution establishing the Committee, a majority of the voting members thereof, or one-half of such members if their number is even, shall constitute a quorum; Provided, That if the Chairman of the Board is present, he may be counted in lieu of any absent voting member for quorum purposes. The vote of a majority of the voting members present at the time of a vote, if a quorum is present at such time, shall be the act of the Committee. Meetings of each Committee shall be called by the chairman of the Committee or any two members of the Committee with notice thereof provided to each Committee member including the Chairman of the Board.

(b) Notice of a Committee meeting shall be provided to members of the Committee in the manner required for notice of special meetings of the Board by §§ 1601.16 and 1601.17(a). Notice may be waived in the manner described in § 1601.17(b). The agenda for the meeting shall be prepared in accordance with § 1601.18, and general notice of the meeting shall be given in accordance with § 1601.19.

(c) All meetings of a Committee shall be open to the public unless a majority of the members of the Committee determines by a recorded vote that consideration of specific matter shall be closed to the public pursuant to the Corporation's regulations implementing 5 U.S.C. 552b.

(d) Minutes shall be kept of each Committee meeting in the manner described in § 1601.24. The minutes shall be available for inspection by the public.

(e) Any Director and the President of the Corporation shall have access to the records of any Committee irrespective of whether he is a member of the Committee.

[45 FR 58364, Sept. 3, 1980; 45 FR 62071, Sept. 18, 1980]

Subpart F—Officers

§ 1601.28 Officers.

The officers of the Corporation shall be a President, a Secretary, a Treasurer, a Comptroller, and such other officers as the Board determines to be necessary. The President of the Corporation shall be appointed by a majority of the Directors in office. Other officers shall be appointed by the President after consultation with the Board. The officers shall have such authority and perform such duties, consistent with the Act and these Bylaws, as may from time to time be determined by the Board or, with respect to the other officers, by the President of the Corporation consistently with any such determination of the Board. The President of the Corporation shall provide supervision and direction to the other officers in the performance of their duties. Any officer may delegate whatever duties he deems appropriate for delegation, consistent with determinations by the Board or, with respect to the other officers, by the President.

[45 FR 58364, Sept. 3, 1980]

§ 1601.29 Appointment, term of office, and qualifications.

The President of the Corporation shall be appointed whenever a vacancy arises. The officers of the Corporation other than the President shall be appointed annually in September for the next ensuing fiscal year or whenever a vacancy arises. Each officer shall hold his office until his successor shall have been duly appointed or until he shall resign or shall have been removed in the manner provided in § 1601.30. Any two offices may be held by the same person, except the offices of the President of the Corporation and Secretary.

[45 FR 58365, Sept. 3, 1980, as amended at 45 FR 62071, Sept. 18, 1980]

§ 1601.30 Removal.

The President of the Corporation may be removed by a majority of the Directors in office, and any other officer may be removed by the President after consultation with the Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

[45 FR 58365, Sept. 3, 1980]

§ 1601.31 Resignation.

Any officer may resign at any time by giving written notice of his resignation to the Board. Such resignation shall take effect at the time received, unless another time is specified therein. The acceptance of such resignation shall not be necessary to make it effective.

§ 1601.32 Vacancies.

Any vacancy in any office shall be filled as provided in § 1601.28.

§ 1601.33 The President.

(a) The President of the Corporation shall be its Chief Executive Officer and shall have the responsibility and authority, in accordance with the Act, rules and regulations promulgated pursuant to the Act, and these Bylaws, subject to the direction of and policies established by the Board for (1) the day-to-day administration of the affairs of the Corporation; (2) the appointment of such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation and the removal of such employees; (3) the making of grants and the entering into of contracts; and (4) the exercise of such other powers incident to the office of the President of the Corporation and the performance of such other duties as the Board may from time to time prescribe.

(b) The President of the Corporation shall be a member of the bar of the highest court of a State and shall be a nonvoting *ex officio* member of the Board of Directors.

§ 1601.34 The Secretary.

The Secretary shall (a) ensure that all notices are duly given in accordance with the Act and these By-laws; (b) be the custodian of the seal of the Corporation and affix such seal to all documents the execution of which is authorized by the Board or by any officer or employee of the Corporation to whom the power to authorize the affixing of such seal shall have been delegated; (c) keep, or cause to be kept, in books provided for the purpose, minutes of the meetings of the Board and of each committee of the Board; (d) ensure that the books, reports, statements, and all other documents and records required by law are properly kept and filed; (e) sign such instruments as require the signature of the Secretary; and (f) in general, perform all the duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him.

§ 1601.35 The Treasurer.

The Treasurer shall (a) have charge and custody of, and be responsible for, all funds and securities of the Corporation and (with the exception of petty cash) deposit all such funds and securities in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these By-laws; (b) receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever; (c) sign such documents as shall require the signature of the Treasurer; (d) render to the Board at each regular meeting and at such times as the Board may require a report on the financial condition of the Corporation; and (e) in general, perform all the duties as from time to time may be assigned to him. The Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such sureties as the Board shall determine.

§ 1601.36 The Comptroller.

The Comptroller shall keep or cause to be kept full and correct records and accounts of the business, transactions, receipts, and disbursements of the Corporation and at all reasonable times shall exhibit such records and accounts to any Director upon application at the office of the Corporation where such records are kept; and shall perform such other duties as from time to time may be assigned to him.

§ 1601.37 Compensation.

The compensation of the President shall be fixed from time to time by the Board, and the compensation of officers other than the President shall be fixed by the President after consultation with the Board. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation except as authorized by the Board.

[45 FR 58365, Sept. 3, 1980]

§ 1601.38 Prohibition against using political test or qualification.

No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation.

§ 1601.39 Outside interests of officers and employees.

The board may from time to time adopt rules and regulations governing the conduct of officers or employees with respect to matters in which they have any interest adverse to the interests of the Corporation. Such rules and regulations may forbid an officer or employee from participating in corporate action with respect to any contract, grant, transaction, or other matter in which, to the knowledge of such officer or employee, he or any member of his immediate family has any interest, financial or otherwise, unless (a) such officer or employee makes full disclosure of the circumstances to the Board or its delegate and the Board or its delegate determines that the interest is not so substantial as to affect the integrity of the services of such officer or employee, or (b) on the basis of standards to be established in such rules and regulations, the interest is too remote or too inconsequential to affect the integrity of such services. Such rules and regulations may also prohibit or establish appropriate limits upon (1) the ownership by an officer or employee, or member of his immediate family, of securities of any firm, corporation, or other entity doing a substantial volume of business with the Corporation, and (2) the present or future association by an officer or employee (or former officer or former employee), or member of his immediate family, with any firm, corporation, or other entity doing a substantial volume of business with the Corporation.

Subpart G—Deposits and Accounts

§ 1601.40 Deposits and accounts.

All funds of the Corporation, not otherwise employed, shall be deposited from time to time in general or special accounts in such banks, trust companies, or other depositories as the Board may select, or as may be selected by any officer, agent, or employee of the Corporation to whom such power has been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts, and other orders for the payment of money that are payable to the order of the Corporation may be endorsed, assigned, and delivered by any officer of the Corporation designated by the Board.

Subpart H—Seal

§ 1601.41 Seal.

The Corporation shall have a corporate seal, which shall include the words "Established by Act of Congress July 25, 1974" and shall be in the form adopted by the Board.

Subpart I—Fiscal Year

§ 1601.42 Fiscal year.

The fiscal year of the Corporation shall begin on October 1.

Subpart J—Indemnification

§ 1601.43 Indemnification.

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a Director, officer, employee, or agent of the Corporation, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action, suit, or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action, or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the

Corporation to procure a judgment in its favor, by reason of the fact that he is or was a Director, officer, employee, or agent of the Corporation, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation, except that no indemnification shall be made in respect to any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a Director, officer, employee, or agent of the Corporation has been successful on the merits or otherwise in the defense of any action, suit, or proceeding referred to in paragraph (a) and (b) of this section or in the defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under paragraph (a) and (b), of this section (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraph (a) and (b) of this section. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Directors eligible to vote who were not parties to such action, suit, or proceeding, or (2) if such quorum is not obtainable or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

(e) Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in any case upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Section.

(f) The indemnification provided by this Section shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any By-law, agreement, or vote of disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Subpart K—Amendments

§ 1601.44 Amendments.

These By-laws may be amended by a vote of a majority of the Directors in office: *Provided,* That (a) such amendment is not inconsistent with the Act, (b) the notice of the meeting at which such action is taken shall have stated the substance of the proposed amendment, (c) the notice of such meeting shall have been mailed, telegraphed, or delivered to each Director at least five days before the date of the meeting, and (d) when feasible, the proposed amendment shall have been published in the FEDERAL REGISTER at least thirty days before the meeting and intersted parties shall have been afforded a reasonable opportunity to comment thereon.

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION

Sec.

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1602.12 Appeals of denials.
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AUTHORITY: Sec. 1005(g), (42 U.S.C. 2996d(g)).

SOURCE: 43 FR 51785, Nov. 7, 1978, unless otherwise noted.

§ 1602.1 Purpose.

This part prescribes the procedures by which records of the Legal Services Corporation may be made available pursuant to section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. 2996d(g), and the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552.

§ 1602.2 Definitions.

As used in this part—

(a) "FOIA" means the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552;

(b) "Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this regulation. Records that may be exempt from disclosure may be made available as a matter of discretion when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the public, the Corporation, or any individual. The Corporation will attempt to provide assistance to requesting parties, including information about how a request may be submitted. The Corporation will act on requests for records in a timely manner.

§ 1602.4 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.5(b) (1)-(3) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters in Washington, D.C., and at each regional office. The Corporation will provide a copy of the index on request, at a cost not to exceed the direct cost of duplication.

§ 1602.5 Central records room.

(a) The Corporation will maintain a central records room at its headquarters at 733 15th Street NW., Suite 700, Washington, D.C. 20005, 202-376-5100. This room will be supervised by a Records Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part. Certain records, described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

(b) Subject to the limitation stated in paragraph (c) of this subsection, there will be available in the central records room the following:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.4.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public. These records will not be maintained in the central records room.

(d) Certain records maintained in the records room or otherwise made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it full explanation of the deletion.

§ 1602.6 Regional records rooms.

(a) Each regional office shall have either a specially designated records room similar to the central records room described in § 1602.5 or, if that is not feasible, a designated area within the office, a principal function of which is to serve the public in accordance with this part. The Corporation will endeavor to maintain and have readily available in its regional offices the records described in § 1602.5(b), and will designate a Records Officer in each regional office to receive and process requests submitted pursuant to this part.

(b) The regional records rooms as of June 15, 1978, are located at the following addresses:

Boston Regional Office, 84 State Street, Room 520, Boston, Mass. 02101.

New York Regional Office, 10 East 40th Street, Room 2010, New York, N.Y. 10016.

Philadelphia Regional Office, 101 North 33rd Street, Suite 404, Philadelphia, Pa. 19104.

Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600—Rosslyn, Arlington, Va. 22209.

Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Ill. 60604.

Atlanta Regional Office, 615 Peachtree Street NE., 9th Floor, Atlanta, Ga. 30308.

San Francisco Regional Office, 177 Post Street, Suite 890, San Francisco, Calif. 94104.

Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colo. 80202.

Seattle Regional Office, 506 Second Avenue, Room 1621, Seattle, Wash. 98104.

§ 1602.7 Use of records rooms.

(a) Any member of the public who wishes to inspect or copy records regularly maintained in the central or a regional records room may secure access to these records by presenting himself or herself at the records room during business hours. No advance notice or appointment is required, although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities.

(b) Each records room will also be available to any member of the public to inspect and copy records which are not regularly maintained in such room. To obtain such records a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce these records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer of the facility which he or she desires to use. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 1602.8 Availability of records on request.

(a) In addition to the records made available through the records rooms, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.* (1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to located the record with a reasonable amount of effort. Requests seeking records within a reasonably specific category will be deemed to conform to the statutory requirement of a request which "reasonably describes" such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requesting party an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requesting party and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information, if known (i) the specific event or action to which the record refers; (ii) the unit or program of the Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates; (iv) the type of record such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which have referred to the record.

(3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be referred to those sources if gathering the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked: "Freedom of Information Request." All such requests shall be addressed to the Records Officer at the headquarters of the Corporation or at any regional records office. Any request not marked and addressed as specified in this subparagraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the headquarters in Washington, D.C. The request must identify the records of which copies are sought in accordance with the requirements of this paragraph, and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with § 1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The Records Officer, upon request for any records made in accordance with this Part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limit may be extended for not more than 10 working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the 10-day period, Corporation officials shall consult with the Office of the General Counsel. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requesting party may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the Records Officer shall nevertheless continue to process the request. On expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

(e) After it has been determined that a request will be granted, the Corporation will act with diligence in providing a substantive response.

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute;

(3) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Investigatory records compiled for enforcing the Act or any other law, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right of a fair trail or an impartial adjudication, (iii)

constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting party after deletion of the portions that are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) A summary of information in the exempt portion of a record; or (2) an oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed in accordance with this paragraph or whether an exemption should be waived in accordance with paragraph (c) of this section, Corporation officials shall consult with the Office of General Counsel. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records that may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it does not appear adverse to legitimate interests of the Corporation, the public, or any person.

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this Part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this Part by and within the Corporation. Other officials of the Corporation shall consult with the General Counsel before denying requests under this Part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. The General Counsel and, subject to consultation with him where required, the Records Officer, each Regional Director, and each Regional Records Officer are authorized to grant or deny requests under this part.

§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) The name and title of the person or persons responsible for denying the request; and

(5) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as opinions and shall be maintained and indexed accordingly, subject only to the necessity of deleting identifying details the release of which would constitute a clearly unwarranted invasion of personal privacy.

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within ninety days by writing to the President of the Corporation at the headquarters in Washington, D.C. The envelope and letter should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the President's specifically designated representative, for this purpose.

(c) The decision of the President on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(a) (1)-(4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within twenty working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed ten days. The President's decision shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) The Records Officer may waive or reduce fees where special circumstances, including but not limited to the benefit of the general public, warrant. A Records Officer shall waive fees where the requesting party is indigent unless the fees would exceed $25 and may waive or reduce fees for the request of an indigent where the fees would exceed $25. These provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(c) There shall be no fee charged for services rendered by the Corporation pursuant to this part, unless the charges, as calculated in paragraph (e) of this section, exceed $6.50. Where the charges are calculated to exceed $6.50, the fee shall be the difference between $6.50 and the calculated charges.

(d) Ordinarily, no fee shall be levied where the records requested are not provided or made available. However, if the time expended in processing the request is substantial, and if the requesting party has been notified of the estimated cost pursuant to paragraph (f) of this section, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information based on the following schedule of direct labor charges:

(a) Programmer = $6.25/quarter hour

(b) Analyst = $3.50/quarter hour

(c) Processor/Clerical = $1.50/quarter hour

(2) Computer time: Actual charges as incurred.

(3) Reproduction, duplication, or copying of records: $0.10 per page.

(4) Reproduction, duplication, or copying of microfilm: Actual charges as incurred.

(5) Certification of true copies: $1.00 each.

(f) Where it is anticipated that the fee chargeable under this Part will amount to more than $25, and the requesting party has not indicated in advance his willingness to pay so high a fee, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requesting party is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost.

(g) Where the anticipated fee chargeable under this Part exceeds $25, an advance deposit of 25 percent of the anticipated fee may be required. Where a requesting party has previously failed to pay a required fee, an advance deposit of the full amount of the anticipated fee together with the fee then due and payable may be required.

(h) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party, or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

PART 1603—STATE ADVISORY COUNCILS

Sec.

1603.1 Purpose.
1603.2 Definitions.
1603.3 Composition and term of office of council membership.
1603.4 Procedure for appointment of council.
1603.5 Council purpose and duties.
1603.6 Duties of Corporation upon receipt of notification of violation.
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1603.9 Annual report of council.
1603.10 Multi-state recipients.

Authority: Sec. 1004(f), 88 Stat. 379-380 (42 U.S.C. 2996c(f)).

Source: 40 FR 59351, Dec. 23, 1975, unless otherwise noted.

§ 1603.1 Purpose.

The purpose of this part is to implement section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f), which provides authority for the appointment of state advisory councils.

§ 1603.2 Definitions.

As used in this part, the term—

(a) "Act" means the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*;

(b) "Apparent violation" means a complaint or other written communication alleging facts which, if established, constitute a violation of the Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act;

(c) "Board" means the Board of Directors of the Legal Services Corporation;

(d) "Corporation" means the Legal Services Corporation established under the Act;

(e) "Council" means a state advisory council established pursuant to Section 1004(f) of the Act;

(f) "Eligible client" means any person financially unable to afford legal assistance;

(g) "Governor" means the chief executive officer of a State;

(h) "Recipient" means any grantee, contractee, or recipient of financial assistance described in clause (A) of Section 1006(a)(1) of the Act;

(i) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

§ 1603.3 Composition and term of office of council membership.

A council shall be composed of nine members. A majority of the members of a council shall be attorneys admitted to practice in the State. It is recommended that the remainder of the council, to the maximum extent possible, be broadly representative of persons concerned with the effective functioning of legal services programs. Membership of a council shall be subject to annual reappointment, but it is recommended that no member of a council be appointed to serve for more than three consecutive years.

§ 1603.4 Procedure for appointment of council.

At the formal request of the Board, to be made before January 14, 1976, the Governor may appoint a council for the State. Those council members who are attorneys admitted to practice in the State shall be appointed by the Governor after recommendations have been received from the State bar association. In making such appointments, it is recommended the the Governor consult with other bar associations in the State, representatives of groups concerned with the interests of recipients, eligible clients and other interested groups. It is recommended that the Governor appoint attorneys who have interest in and knowledge of the delivery of quality legal services to the poor, and that the remaining members of the council, who are not attorneys, be selected after the Governor has consulted with representatives of groups concerned with the interests of eligible clients. It is recommended that the Governor seek recommendations from recipients in the State before appointing any members to the council. Sixty days prior to the expiration of a member's term, the Governor shall notify those groups mentioned in this Section so that their recommendations may be solicited for purposes of appointment of a new member or reappointment of an incumbent member of the council.

§ 1603.5 Council purpose and duties.

(a) The purpose of the council shall be to notify the Corporation of any apparent violation as defined in § 1603.2(b) of this chapter.

(b) In fulfilling the purpose set forth in paragraph (a) of this section, the council shall forward any apparent violation to the Corporation. The Chairperson of the council shall inform the complainant, the Corporation and the recipient of any action taken on the complaint. Notification of an apparent violation forwarded by the council to the Corporation shall not necessarily constitute a position of the council concerning the apparent violation.

(c) These procedures are not exclusive. Complaints may be submitted to the Corporation, and complaints submitted to a council may be submitted to the Corporation without regard to council action. The Corporation shall inform the complainant, the council and the recipient of all action taken on the complaint.

§ 1603.6 Duties of Corporation upon receipt of notification of violation.

(a) Upon receipt of a notification of an apparent violation, the matters contained therein shall be investigated and resolved by the Corporation in accordance with the Act and rules and regulations issued thereunder.

(b) Upon receipt from a council of a notification of an apparent violation, the Corporation shall allow any recipient affected thereby a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notication.

(c) The Corporation shall inform the Chairperson of a council of the action, if any, the Corporation has taken with regard to any notification received from such council.

§ 1603.7 Organization and procedural functioning of council.

(a) Within 30 days after the appointment of the council, and annually thereafter, the Governor shall send to the Secretary of the Corporation in Washington, D.C., a list of the members of the council for the State that shall include the name, address and telephone number of each council member, and indicate which members are attorneys.

(b) It is recommended that the Governor appoint from among those named to the council a Chairperson of the council.

(c) It is recommended that each council establish at its first meeting such fair and reasonable procedures for its operation as it may deem necessary to carry out the purpose set forth in § 1603.5(a) of this chapter. The procedures for operation of the council shall include provisions for notifying the appropriate regional director of the Corporation of the time and place of any meeting of the council.

(d) It is recommended that a council meet at the call of the Chairperson thereof, or at the request to the Chairperson of at least four members thereof, at such times as may be necessary to carry out its duties, but at least annually.

§ 1603.8 Corporation support of council.

(a) The Corporation shall inform the Chairperson of each council of the funds available to the council from the Corporation for actual and reasonable expenses incurred by members of the council to pursue council business.

(b) It shall be the duty of the President of the Corporation to keep the Chairperson of each council informed of the work of the Corporation.

(c) The Secretary of the Corporation shall mail annually to each recipient the name and address of the Chairperson of the appropriate council and a form of notice indicating where complaints may be sent. The recipient shall post said name and address of the Chairperson and said notice in plain public view in each office of the recipient.

§ 1603.9 Annual report of council.

On or before March 31, 1977, and on or before March 31 of each succeeding year, a council shall submit to the Corporation a report of the activities of the council during the previous calender year. The report may contain comments or suggestions regarding how best to provide high quality legal assistance to the poor, and regarding such other matters having to do with provision of legal services to eligible clients in the State as the council may deem advisable.

§ 1603.10 Multi-state recipients.

Where a recipient has offices in more than one State, the council of the State in which the apparent violation occurred has the responsibility for notifying the Corporation and the recipient at its local and administrative offices.

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.
1604.1 Purpose.
1604.2 Definitions.
1604.3 General policy.
1604.4 Compensated outside practice.
1604.5 Uncompensated outside practice.

Authority: Sec. 1007(a)(4), 1008(e) (42 U.S.C. 2996f(a)(4) 2996g(e)).

Source: 41 FR 18512, May 5, 1976, unless otherwise noted.

§ 1604.1 Purpose.

This part is designed to permit an attorney to comply with the reasonable demands made upon all members of the Bar and officers of the Court, so long as those demands do not hinder fulfillment of the attorney's overriding responsibility to serve those eligible for assistance under the Act.

§ 1604.2 Definitions.

(a) "Attorney", as used in this part, means a person who is employed full time in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is rendered.

(b) "Outside practice of law" means the provision of legal assistance to a client who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluation.

§ 1604.3 General policy.

No attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities.

§ 1604.4 Compensated outside practice.

A recipient may permit an attorney to engage in the outside practice of law for compensation if § 1604.3 is satisfied, and

(a) The attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible; or

(b) The attorney is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction, and remits to the recipient all compensation received.

§ 1604.5 Uncompensated outside practice.

A recipient may permit an attorney to engage in uncompensated outside practice of law if § 1604.3 is satisfied, and the attorney is acting:

(a) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or on behalf of;

(b) A close friend or family member; or

(c) A religious, community, or charitable group.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.
1605.1 Purpose.
1605.2 Definition.
1605.3 Review of Appeals.

AUTHORITY: Sec. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

"Appeal" means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1606—PROCEDURES GOVERNING TERMINATION OF FINANCIAL ASSISTANCE AND DENIAL OF REFUNDING

Sec.
1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for denial or refunding.
1606.4 Grounds for termination.
1606.5 Preliminary determination.
1606.6 Informal conference.
1606.7 Initiation of proceedings.
1606.8 Presiding officer.
1606.9 Pre-hearing conference.
1606.10 Conduct of hearing.
1606.11 Burden of proof.
1606.12 Briefs and argument.
1606.13 Recommended decision.
1606.14 Final decision.
1606.15 Time extension and waiver.
1606.16 Right to counsel.
1606.17 Reimbursement.
1606.18 Interim funding.
1606.19 Termination funding.
1606.20 Notice.

AUTHORITY: Sec. 1006(b)(1) and (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C. 2996e(b)(1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(9), 2996f(d), 2996g(e), 2996j).

SOURCE: 43 FR 32770, July 28, 1978, unless otherwise noted.

§ 1606.1 Purpose.

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe a grant or contract should be terminated or refunding denied, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

§ 1606.2 Definitions.

(a) "Termination" means a decision that financial assistance to a recipient will be permanently terminated in whole or in part prior to expiration of the recipient's current grant or contract.

(b) "Denial of refunding" means a decision that, after expiration of its current grant or contract, a recipient:

(1) Will not be provided with financial assistance; or

(2) Will have its annual level of financial support reduced to an extent that is not required either by a change of law or by a reduction in the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding, and is either more than 10 percent or more than

$20,000 below the recipient's annual level of financial assistance under its current grant or contract; or

(3) Will be provided with financial assistance subject to a new condition or restriction that is not generally applicable to all recipients of the same class, and that would significantly reduce the ability of a recipient to maintain the quality and quantity of its current legal assistance to eligible clients.

(c) "Director of a recipient" means the person who has overall day-to-day responsibility for management of operations by the recipient.

(d) "Presiding Officer" means the person appointed by the President to recommend a decision that a grant or contract should be continued or terminated, or that refunding should be granted or denied.

§ 1606.3 Grounds for denial or refunding.

Refunding may be denied when

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action; or

(c) There had been substantial failure by a recipient to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

§ 1606.4 Grounds for termination.

A grant or contract may be terminated on any of the grounds and under the circumstances stated in § 1606.3, except that termination shall not be based on a Corporation rule, regulation, guideline, or instruction that was not in effect when the current grant was made or when the current contract was entered into.

§ 1606.5 Preliminary determination.

(a) When there is reason to believe that a grant or contract should be terminated or that refunding should be denied, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for the proposed action, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for that action.

(b) The preliminary determination shall advise the recipient that it may, within 10 days of receipt of the preliminary determination, make written request for:

(1) A hearing under this part, or

(2) An informal conference under § 1606.6 of this part, with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to receive interim, and to request termination, funding, under §§ 1606.18 or 1606.19 of this part.

(d) If the recipient advises the Corporation that it will not request review, or if it fails to request review within the time prescribed in § § 1606.5(b) or 1606.6, the preliminary determination shall become final.

§ 1606.6 Informal conference.

On timely request by the recipient, the Corporation employee who made the preliminary determination shall promptly conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within 5 days thereafter, make written request for a hearing under § § 1606.9 through 1606.15 of this part.

§ 1606.7 Initiation of proceedings.

Within 10 days after receipt of a request for a hearing made under § § 1606.5(b) or 1606.6, the Corporation shall notify a recipient in writing of:

(a) The name of the presiding officer, and of the attorney who will represent the Corporation;

(b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and

(c) The date, time and place scheduled for the hearing.

§ 1606.8 Presiding officer.

(a) The presiding officer shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of the notice required under § 1606.7, the recipient shall notify the Corporation if it objects to the presiding officer on the grounds that the person does not satisfy the criteria stated in § 1606.8(a), or is personally biased. The notice shall state the specific facts and documents that the recipient contends support its objection, and, if a prehearing conference has not been scheduled, shall request a pre-hearing conference for the purpose of presenting the objection. At the pre-hearing conference, the recipient and the Corporation may question the presiding officer for a reasonable period of time on matters relevant to the recipient's objection.

(c) The recipient shall, within 5 days following the pre-hearing conference, notify the Corporation of any further facts that it contends support its objections. The President shall, within 10 days following the pre-hearing conference, either sustain the objection and appoint a new hearing officer or overrule the objection.

(d) No objection to the appointment of a presiding officer may be made unless presented in the manner specified by this section.

§ 1606.9 Pre-hearing conference.

(a) A pre-hearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues;

(2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;

(5) The desirability of advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing;

(7) Discussion of settlement; and

(8) Such other matters as may be appropriate.

(b) In advance of the pre-hearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the pre-hearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the pre-hearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completeness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

§ 1606.10 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 45 days after the notice required by § 1606.7, and, whenever practical, shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community or recipient shall be held in a single centrally located place unless the presiding officer determines that an additional hearing place is required.

(b) The presiding officer shall preside, conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is made. The hearing shall be open to the public unless, for good cause and in the interests of justice, the presiding officer shall determine otherwise.

(c) The presiding officer may allow any interested person or organization to participate in the hearing if such participation will not broaden the issues unduly or cause delay, and will aid in proper determination of the issues.

(1) A person or organization wishing to participate in a hearing shall request permission from the presiding officer, stating the reason for the request, and the nature of the evidence or argument to be offered; and shall notify the Corporation and the recipient of its request.

(2) The presiding officer shall notify the Corporation, the recipient, and the person or organization requesting participation whether the request has been granted, and in case of denial shall include a brief statement of the reasons therefor.

(3) The presiding officer may limit the scope or form of participation authorized under this paragraph.

(d) The Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(e) If a party fails, without good cause, to produce a person or document required under § 1606.9(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A stenographic or electronic sound record, or a summary of the hearing shall be made in a manner determined by the presiding officer, and a copy shall be made available to a party upon payment of its cost.

§ 1606.11 Burden of proof.

At a hearing under § 1606.10:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for termination or denial of refunding; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for terminating the grant or contract or denying refunding.

§ 1606.12 Briefs and argument.

(a) Within 10 days after the close of the hearing, each party may, and, upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

§ 1606.13 Recommended decision.

(a) As soon as practicable after the hearing, and normally within 20 days after its conclusion, the presiding offi-

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cer shall issue a written recommended decision.

(1) Continuing the recipient's current grant or contract, or granting refunding subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Terminating financial assistance to the recipient as of a particular date, or denying refunding.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.14 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) As soon as practicable after receipt of a request for review of a recommended decision, and normally within 30 days, the President shall adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.13(b).

(d) A decision by the President shall become final upon receipt by a recipient.

§ 1606.15 Time and extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the person making the preliminary determination, prior to the time the presiding officer is designated;

(2) By the presiding officer, prior to the issuance of a recommended decision; or

(3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified:

(1) By the presiding officer with the assent of the recipient and of counsel for the Corporation; or

(2) By the President upon good cause shown and determined.

§ 1606.16 Right to counsel.

At a hearing under § 1606.10, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose. Unless prior written approval is received from the Corporation, the fee paid to outside counsel shall not exceed the hourly equivalent of the rate of level V of the executive schedule specified in section 5316 of title 5, United States Code.

§ 1606.17 Reimbursement.

If the recipient's grant or contract is continued or refunding is granted after a preliminary determination has been issued under § 1606.5, a recipient shall receive reimbursement by the Corporation, to the extent it has prevailed, for reasonable and actual expenses that were required in connection with proceedings under this part.

§ 1606.18 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continuation of its grant or contract or to refunding. Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the act.

§ 1606.19 Termination funding.

After a final determination to terminate a recipient's grant or contract or to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

§ 1606.20 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

PART 1607—GOVERNING BODIES

Sec.
1607.1 Purpose.
1607.2 Definition.
1607.3 Composition.
1607.4 Functions of a governing body.
1607.5 Waiver.
1607.6 Compensation.
1607.7 Compliance.

AUTHORITY: Sec. 1007(c); 42 U.S.C. 2996f(c).

SOURCE: 43 FR 32772, July 28, 1978, unless otherwise noted.

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel, and to insure that the recipient is accountable to its clients.

§ 1607.2 Definition.

"Eligible client," as used in this part, means a person eligible to receive legal assistance under the act, without regard to whether the person is receiving assistance at the time of selection for membership on a governing body.

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance, and shall have a governing body that reasonably reflects the interests and characteristics of the eligible clients in the area served.

(b) At least sixty (60) percent of a governing body shall be attorneys admitted to practice in a State in which a recipient is to provide legal assistance, who are supportive of the purposes of the act and have interest in, and knowledge of, the delivery of quality legal services to the poor.

(c) The attorney shall be selected from, or designated by, appropriate Bar Associations and other groups, including, but not limited to, law schools, civil rights or antipoverty organizations, and organizations of eligible clients.

(d) At least one-third of a governing body shall be, when selected, eligible clients.

(e) The members who are eligible clients shall be selected from, or designated by, a variety of appropriate groups including, but not limited to, client and neighborhood associations and organizations.

(f) The remaining members of a governing body, whatever the method of selection, shall be individuals interested in and supportive of legal services to the poor.

(g) No category of governing board membership shall be dominated by persons serving as the representatives of a single association, group, or organization.

(h) Members of a governing body may be selected by appointment, election, or other means. The method of selection and composition shall be subject to approval by the Corporation.

§ 1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(b) A governing body shall establish and enforce broad policies governing the operation of a recipient, but shall not interfere with any attorney's professional responsibilities to clients.

§ 1607.5 Waiver.

(a) Upon application, the President shall waive the requirements of this part to permit a recipient that was funded under section 222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) The President may waive the requirements of this part upon application of a recipient that demonstrates that it cannot comply with them because of:

(1) The nature of the population or area served; or

(2) Special circumstances, including, but not limited to, conflicting requirements of the recipient's major funding source.

(c) A recipient seeking a waiver shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

§ 1607.6 Compensation.

While serving on the governing body of a recipient, no member shall receive compensation from the recipient, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership.

§ 1607.7 Compliance.

(a) A recipient whose current governing body does not satisfy the requirements of this part shall submit a plan for achieving compliance to the relevant Regional Director immediately.

(b) The President may, upon application, extend the time in which a recipient must comply with the requirements of § 1607.3 paragraphs (d) and (e). The application shall state:

(1) The current composition of the recipient's governing body, and the date upon which the composition was achieved;

(2) The date upon which the term of each current member of the recipient's governing body will expire;

(3) The recipient's plan for complying with the requirements of § 1607.3 paragraphs (d) and (e) with all possible speed; and,

(4) The reasons why complying immediately would be unduly burdensome to the recipient.

(c) An application for an extension of time under paragraph (b) of this section must be received by the Corporation no later than 30 days after the effective date of the regulation. A copy of the application shall also be sent to the National Clients Council, which shall transmit its comments on the application, if any, to the Corporation. An extension may be granted for no more than 6 months, and no more than two extensions may be granted to any recipient. In no event may the time for compliance be extended beyond July 1, 1979.

PART 1608—PROHIBITED POLITICAL ACTIVITIES

Sec.
1608.1 Purpose.
1608.2 Definition.
1608.3 Prohibitions applicable to the Corporation and to recipients.
1608.4 Prohibitions applicable to all employees.
1608.5 Prohibitions applicable to Corporation employees and staff attorneys.
1608.6 Prohibitions applicable to attorneys and to staff attorneys.
1608.7 Attorney-client relationship.
1608.8 Enforcement.

AUTHORITY: Secs. 1001(5), 1005(b)(2), 1006(b)(3), 1006(b)(5)(B), 1006(d)(3), 1006(d)(4), 1006(e)(1), 1006(e)(2), 1007(a)(6), 1007(b)(2); 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996e(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996(b)(2).

SOURCE: 43 FR 32773, July 28, 1978, unless otherwise noted.

§ 1608.1 Purpose.

This part is designed to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

§ 1608.2 Definition.

"Legal assistance activities," as used in this part, means any activity.

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1608.3 Prohibitions applicable to the Corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the act.

(b) Neither the Corporation nor any recipient shall contribute or make available Corporation funds, or any personnel or equipment

(1) To any political party or association;

(2) To the campaign of any candidate for public or party office; or

(3) For use in advocating or opposing any ballot measure, initiative, or referendum.

§ 1608.4 Prohibitions applicable to all employees.

(a) No employee shall intentionally identify the Corporation or a recipient with any partisian or nonpartisan political activity, or with the campaign of any candidate for public or party office.

(b) No employee shall use any Corporation funds for activities prohibited to attorneys under § 1608.6; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

§ 1608.5 Prohibitions applicable to Corporation employees and to staff attorneys.

While employed under the act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan of nonpartisan;

(b) Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(c) Be a candidate for partisan elective public office.

§ 1608.6 Prohibitions applicable to attorneys and to staff attorneys.

While engaged in legal assistance activities supported under the act, no attorney shall engage in

(a) Any political activity,

(b) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(c) Any voter registration activity.

§ 1608.7 Attorney-client relationship.

Nothing in this Part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§ 1608.8 Enforcement.

This part shall be enforced according to the procedures set forth in § 1612.5.

PART 1609—FEE-GENERATING CASES

Sec.

1609.1 Purpose.
1609.2 Definition.
1609.3 Prohibition.
1609.4 Authorized representation in a fee-generating case.
1609.5 Acceptance of fees.
1609.6 Acceptance of reimbursement.
1609.7 Application.

Authority: Sec. 1007(b)(1), (42 U.S.C. 2996f(b)(1)).

Source: 41 FR 38505, Sept. 10, 1976, unless otherwise noted.

§ 1609.1 Purpose.

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

§ 1609.2 Definition.

"Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

§ 1609.3 Prohibition.

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

§ 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when: (a) The recipient has determined that free referral is not possible because:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or

(3) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee; or

(4) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(d) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

[41 FR 38505, Sept. 10, 1976, as amended at 43 FR 51789, Nov. 7, 1978]

§ 1609.5 Acceptance of fees.

(a) A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if

(1) The requirements of § 1609.4 are met, and

(2) Funds received are not used for purposes prohibited by the Act, and are accounted for in the manner directed by the Corporation.

(b) If a legal fee is awarded or approved by a court or administrative body, it shall be remitted promptly to the recipient.

§ 1609.6 Acceptance of reimbursement.

When a case or matter subject to this part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

(a) The requirements of § 1609.4 are met, and

(b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

§ 1609.7 Application.

Nothing in this part shall prevent a recipient from:

(a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or

(b) Accepting a fee in a case that was initiated prior to adoption of this part; or

(c) Acting as co-counsel with a private attorney when appropriate, and accepting part of any fee that may result from a shared case.

PART 1610—USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

Sec.
1610.1 Definition.
1610.2 Prohibition.
1610.3 Authorized use of other funds.
1610.4 Accounting.
1610.5 Waiver.

AUTHORITY: Sec. 1010(c); (42 U.S.C. 2996i).

SOURCE: 41 FR 25902, June 23, 1976, unless otherwise noted.

§ 1610.1 Definition.

As used in this part, the phrase "purposes prohibited by the Act or Corporation Regulations" refers to activities prohibited by the following Sections of the Act and the regulations promulgated thereunder:

(a) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(2) (Political activities);

(b) Section 1007(a)(5) (Legislative and administrative representation);

(c) Section 1007(a)(10) (Activities inconsistent with professional responsibilities);

(d) Section 1007(b)(1) (Fee-generating cases; criminal proceedings; civil actions challenging criminal convictions);

(e) Section 1007(b)(4) (Representation of juveniles);

(f) Section 1007(b)(5) (Advocacy training);

(g) Section 1007(b)(6) (Organizing activities);

(h) Section 1007(b)(7) (School desegregation);

(i) Section 1007(b)(8) (Abortions); and

(j) Section 1007(b)(9) (Violations of Military Selective Service Act or military desertion).

§ 1610.2 Prohibition.

Funds received from another source for the provision of legal assistance shall not be used by a recipient for purposes prohibited by the Act or Corporation regulations, unless such use is authorized by § 1610.3.

§ 1610.3 Authorized use of other funds.

A receipient may receive public or tribal funds and use them in accordance with the purposes for which they were provided.

§ 1610.4 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements, in the manner directed by the Corporation.

§ 1610.5 Waiver.

Any provision of this part may be waived by the President when necessary to permit the Corporation to make a contract or other arrangement for the provision of legal assistance with any private attorney, law firm, state or local entity of attorneys, or a legal aid organization that has a separate public defender program.

PART 1611—ELIGIBILITY

Sec.

1611.1 Purpose.
1611.2 Definition.
1611.3 Maximum income level.
1611.4 Authorized exceptions.
1611.5 Determination of eligibility.
1611.6 Manner of determining eligibility.
1611.7 Change of circumstances.

APPENDIX A—LEGAL SERVICES CORPORATION POVERTY GUIDELINES

AUTHORITY: Sec. 1007(a)(2); (42 U.S.C. 2996(a)(2)).

SOURCE: 43 FR 32414, July 27, 1978, unless otherwise noted.

§ 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

"Governmental income maintenance program" means aid for dependent children, supplemental security income, unemployment compensation, and a State or county general assistance or home relief program.

"Governmental program for the poor" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages. They include income from self-employment after deductions for business or farm expenses; they include regular payments from public assistance, social security, unemployment and worker's compensation, strike benefits from union funds, veterans benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, or received from sale of real or personal property, or from tax refunds, gifts, one-time insurance payments or compensation for injury; nor do they include non-cash benefits.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the official poverty threshold as defined by the Office of Management and Budget.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

§ 1611.4 Authorized exceptions.

A person whose income exceeds the maximum income level established by a recipient may be provided legal assistance under the Act if:

(a) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b); or

(b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor; or

(c) The person would be eligible but for receipt of benefits from a governmental income maintenance program.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to income, a recipient shall consider other relevant factors before determining whether a person is eligible to receive legal assistance. Factors considered shall include:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid net assets;

(3) Fixed debts and obligations, including Federal and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(7) The consequences for the individual if legal assistance is denied; and

(8) Other factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determina-

tion that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

(c) A recipient may provide legal assistance to a group, corporation, or association if it:

(1) Is primarily composed of persons eligible for legal assistance under the act, or

(2) Has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance, and

(3) Provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without the express written consent of the client.

§ 1611.7 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

APPENDIX A—LEGAL SERVICES CORPORATION POVERTY GUIDELINES

FOR ALL STATES EXCEPT ALASKA AND HAWAII

	Maximum income
Size of family unit: [1]	
1	$5,388
2	7,113
3	8,838
4	10,563
5	12,288
6	14,013
For Alaska: [2]	
1	6,763
2	8,913
3	11,063
4	13,213
5	15,363
6	17,513
For Hawaii: [3]	
1	6,225
2	8,200
3	10,175
4	12,150
5	14,125
6	16,100

[1] For family units with more than six members, add $1,725 for each additional member in a family.

[2] For each family unit with more than six members, add $2,150 for each additional member in a family.

[3] For family units with more than six members, add $1,975 for each additional member in a family.

[46 FR 19936, Apr. 2, 1981]

PART 1612—RESTRICTIONS ON CERTAIN ACTIVITIES

Sec.
1612.1 Definition.
1612.2 Public demonstrations and other activities.
1612.3 Attorney-client relationship.
1612.4 Legislative and administrative representation.
1612.5 Enforcement.

AUTHORITY: Secs. 1006(b)(5), 1007(a)(5), 1011, 1008(e), Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 2996e(b)(5), 2996f(a)(5), 2996j, 2996g(e)).

SOURCE: 43 FR 32774, July 28, 1978, unless otherwise noted.

§ 1612.1 Definition.

"Legal assistance activities," as used in this part, means any activity

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1612.2 Public demonstrations and other activities.

(a) While carrying out legal assistance activities under the Act no employee shall

(1) Knowingly participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While employed under the Act, no employee shall, at any time,

(1) Knowingly participate in any;

(i) Rioting or civil disturbance;

(ii) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(iii) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation regulations, or the Code of Professional Responsibility; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

§ 1612.3 Attorney-client relationship.

Nothing in this part shall prohibit an attorney from

(a) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof;

(b) Attending a public demonstration, picketing, boycott, or strike for the purpose of providing legal assistance to a client; or

(c) Fulfilling the professional responsibilities of an attorney to a client.

§ 1612.4 Legislative and administrative representation.

(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition.

(1) An employee may engage in such activities in response to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient; and

(2) An employee may engage in such activities on behalf of an eligible client of a recipient, if the client may be affected by a particular legislative or administrative measure but no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible; and

(3) An employee may engage in such activities if a governmental agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities under the Act of the recipient or the Corporation.

(b) Recipients shall adopt appropriate procedures and forms to document that the legislative activities in which they engage fall within the activities permitted in § 1612.4(a).

(c) Recipients may not establish full time legislative offices unless the decision to establish such an office is formally made by the Board of Directors of the recipient consistent with the provisions of Section 1620, provided that the legislative activities of these offices are solely activities permitted under § 1612.4(a).

(d) Nothing in this section is intended to prohibit an employee from

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies; or

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation; or

(3) Communicating with the Corporation for any purpose.

[43 FR 32774, July 28, 1978, as amended at 46 FR 16268, Mar. 21, 1981]

§ 1612.5 Enforcement.

(a) The Corporation shall have authority in accordance with the procedures set forth in Part 1606 and Part 1623 of these regulations:

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this part; and

(2) To suspend or terminate financial assistance to a recipient who fails to insure that its employees refrain from activities prescribed by the Act or by this part.

(b) A recipient shall:

(1) Advise employees about their responsibilities under this part; and

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the Act, for determining whether an employee has violated a provision of this part; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Consult the General Counsel of the Corporation before suspending or terminating the employment of any person for violation of this part.

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

Sec.
1613.1 Purpose.
1613.2 Definition.
1613.3 Prohibition.
1613.4 Authorized representation.

AUTHORITY: Sec. 1007(b)(1); 42 U.S.C. 2996f(b)(1).

SOURCE: 43 FR 32775, July 28, 1978, unless otherwise noted.

§ 1613.1 Purpose.

This part is designed to insure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is required as part of an attorney's responsibilities as a member of the bar.

§ 1613.2 Definition.

"Criminal proceeding" means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated "criminal" by applicable law and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a "criminal proceeding".

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding.

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

Sec.
1615.1 Purpose.
1615.2 Prohibition.
1615.3 Application of this part.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

SOURCE: 41 FR 38508, Sept. 10, 1976, unless otherwise noted.

§ 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

§ 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

§ 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

PART 1616—ATTORNEY HIRING

Sec.
1616.1 Purpose.
1616.2 Definition.
1616.3 Qualifications.
1616.4 Recommendations.
1616.5 Preference to local applicants.
1616.6 Equal employment opportunity.
1616.7 Language ability.

Authority: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4); (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 2996e(b)(4)).

Source: 41 FR 38509, Sept. 10, 1976, unless otherwise noted.

§ 1616.1 Purpose.

This part is designed to promote a mutually beneficial relationship between a recipient and the local Bar and community, and to insure that a recipient will choose highly qualified attorneys for its staff.

§ 1616.2 Definition.

"Community", as used in this part, means the geographical area most closely corresponding to the area served by a recipient.

§ 1616.3 Qualifications.

A recipient shall establish qualifications for individual positions for attorneys providing legal assistance under the Act, that may include, among other relevant factors:

(a) Academic training and performance;

(b) The nature and extent of prior legal experience;

(c) Knowledge and understanding of the legal problems and needs of the poor;

(d) Prior working experience in the client community, or in other programs to aid the poor;

(e) Ability to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language, ability to speak that language; and

(f) Cultural similarity with the client community.

§ 1616.4 Recommendations.

(a) Before filling an attorney position, a recipient shall notify the organized Bar in the community of the existence of a vacancy, and of the qualifications established for it, and seek recommendations for attorneys who meet the qualifications established for the position.

(b) A recipient shall similarly notify and seek recommendations from other organizations, deemed appropriate by the recipient, that have knowledge of the legal needs of persons in the community unable to afford legal assistance.

§ 1616.5 Preference to local applicants.

When equally qualified applicants are under consideration for an attorney position, a recipient shall give preference to an applicant residing in the community to be served.

§ 1616.6 Equal employment opportunity.

A recipient shall adopt employment qualifications, procedures, and policies that meet the requirements of applicable laws prohibiting discrimination in employment, and shall take affirmative action to insure equal employment opportunity.

§ 1616.7 Language ability.

In areas where a significant number of clients speak a language other than English as their principal language, a recipient shall adopt employment policies that insure that legal assistance will be provided in the language spoken by such clients.

PART 1617—CLASS ACTIONS

Sec.

1617.1 Purpose.
1617.2 Definition.
1617.3 Approval required.
1617.4 Standards for approval.

Authority: Secs. 1006(d)(5), 1007(a)(1), 1007(a)(3), 1008(e); (42 U.S.C. 2996e(d)(5), 2996f(a)(1), 2996(a)(3), 2996g(e)).

Source: 41 FR 51607, Nov. 23, 1976, unless otherwise noted.

§ 1617.1 Purpose.

This part is intended to promote responsible, efficient, and effective use of Corporation resources. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1617.2 Definition.

"Class action" means a class suit, class action appeal, or amicus curiae class action, as defined by statute or the rules of civil procedure of the court in which an action is filed.

§ 1617.3 Approval required.

No class action may be undertaken by a staff attorney without the express approval of the director of the recipient, acting in accordance with policies established by the governing board.

§ 1617.4 Standards for approval.

The governing body of a recipient shall adopt policies to guide the director of the recipient in determining whether to approve class action litigation. The policies adopted:

(a) Shall not prohibit class action litigation when appropriate to provide effective representation to a client or a group of similarly situated clients;

(b) Shall not require case-by-case approval of class action litigation by the governing body;

(c) Shall give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act or Corporation regulations; and

(d) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1618—ENFORCEMENT PROCEDURES

Sec.

1618.1 Purpose.
1618.2 Definition.
1618.3 Complaints.
1618.4 Duties of Recipients.
1618.5 Duties of the Corporation.

Authority: Secs. 1006(b)(1), 1006(b)(2), 1006(b)(5), 1007(d), 1008(e); (42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(d), 2996g(e)).

Source: 41 FR 51608, Nov. 23, 1976, unless otherwise noted.

§ 1618.1 Purpose.

In order to insure uniform and consistent interpretation and application of the Act, and to prevent a question of whether the Act has been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with the Act.

§ 1618.2 Definition.

As used in this part, "Act" means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

§ 1618.3 Complaints.

A complaint of a violation of the Act by a recipient or an employee may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of Recipients.

A recipient shall:

(a) Advise its employees of their responsibilities under the Act; and

(b) Establish procedures, consistent with the notice and hearing requirements of Section 1011 of the Act, for determining whether an employee has violated a prohibition of the Act; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(2) Suspension and termination of employment; and

(3) Other sanctions appropriate for enforcement of the Act; but

(c) Before suspending or terminating the employment of any person for violating a prohibition of the Act, a recipient shall consult the Corporation to insure that its interpretation of the Act is consistent with Corporation policy.

§ 1618.5 Duties of the Corporation.

(a) Whenever there is reason to believe that a recipient or an employee may have violated the Act, or failed to comply with a term of its Corporation grant or contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient pursuant to the procedures set forth in Part 1612, or may take other action to enforce compliance with the Act.

PART 1619—DISCLOSURE OF INFORMATION

Sec.
1619.1 Purpose.
1619.2 Policy.
1619.3 Referral to the Corporation.
1619.4 Exemptions.

AUTHORITY: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996g(e)).

SOURCE: 42 FR 4848, Jan. 26, 1977, unless otherwise noted.

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to Part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of:

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

Sec.
1620.1 Purpose.
1620.2 Procedure.
1620.3 Review.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

SOURCE: 43 FR 51789, Nov. 7, 1978, unless otherwise noted.

§ 1620.1 Purpose.

This part is designed to insure that a recipient, through policies and plans adopted by its governing body, takes into account the views of eligible clients, staff and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of federal law.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedure adopted shall:

(1) Include an appraisal of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on comments from eligible clients solicited in a manner reasonably calculated to obtain the attitudes of all significant segments of the client population, as well as comments from the recipient's employees, governing body members, and other interested persons. In addition to substantive legal problems, the appraisal shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of priorities, in the development of the report required by paragraph (c) of this section, and in the review required by § 1620.3, and provide an opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The appraisal described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic area served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

(4) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the clients of the recipient;

(7) The general effect of the resolution of a particular category of cases or matters on eligible clients in the area served;

(8) The susceptibility of particular problems to solution through legal processes; and

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served.

(c) The recipient shall prepare a brief written report describing its priorities, how they were developed, and the implications of those priorities for the allocation of its resources. The report shall be available to the public.

§ 1620.3 Review.

Priorities shall be reviewed at least annually. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) The extent to which the objectives of the recipient's priorities have been accomplished;

(b) Changes in the resources of the recipient; and,

(c) Changes in the size or needs of the eligible client population.

PART 1621—CLIENT GRIEVANCE PROCEDURE

Secs.
1621.1 Purpose.
1621.2 Grievance Committee.
1621.3 Complaints about legal assistance.
1621.4 Complaints about denial of assistance.

Authority: Sec. 1006(b)(1), 41 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1).

Source: 42 FR 37551, July 22, 1977, unless otherwise noted.

§ 1621.1 Purpose.

By providing an effective remedy for a person who believes that legal assistance has been denied improperly, or who is dissatisfied with the assistance provided, this part seeks to insure that every recipient will be accountable to those it is expected to serve, and will provide the legal assistance required by the Act.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints about legal assistance.

(a) A recipient shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered.

(b) The procedures shall provide at least:

(1) Information to a client at the time of the initial visit about how to make a complaint, and

(2) Prompt consideration of each complaint by the director of the recipient, or the director's designee, and, if the director of the recipient is unable to resolve the matter,

(3) An opportunity for a complainant to submit an oral and written statement to a grievance committee established by the governing body. The complainant may be accompanied by another person. Upon request, the recipient shall transcribe a brief written statement, dictated by the complainant, for inclusion in the recipient's complaint file.

(c) A file containing every complaint and a statement of its disposition shall be preserved for examination by the Corporation. The file shall include any written statement submitted by the complainant.

§ 1621.4 Complaints about denial of assistance.

A recipient shall establish a simple procedure for review of a decision that a person is financially ineligible, or that assistance is prohibited by the Act or Corporation Regulations, or by priorities established by the recipient pursuant to section 1620. The procedure shall include information about how to make a complaint, adequate notice, an opportunity to confer with the director of the recipient or the director's designee, and, to the extent practicable, with a representative of the governing body.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

Sec.
1622.1 Purpose and scope.
1622.2 Definitions.
1622.3 Open meetings.
1622.4 Public announcement of meetings.
1622.5 Grounds on which meetings may be closed or information withheld.
1622.6 Procedures for closing discussion or withholding information.
1622.7 Certification by the General Counsel.
1622.8 Records of closed meetings.
1622.9 Report to Congress.

Authority: Sec. 1004(g), Pub. L. 95-222, 91 Stat. 1619, (42 U.S.C. 2996c(g)).

Source: 43 FR 11198, March 17, 1978, unless otherwise noted.

§ 1622.1 Purpose and scope.

This part is designed to provide the public with full access to the deliberations and decisions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

"Board" means the Board of Directors of the Legal Services Corporation.

"Committee" means any formally designated subdivision of the Board established pursuant to § 1601.26 of the By-Laws of the Corporation.

"Council" means a state Advisory Council appointed by a state Governor or the Board pursuant to Section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f).

"Member" means a voting member of the Board or of a Council. Reference to actions by or communications to "members" means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

"Meetings" means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

"Quorum" means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the number of council members authorized to conduct its business.

"General Counsel" means the General Counsel of the Corporation, or a person designated by the General Counsel, or a member designated by a council to act as its chief legal officer.

"Secretary" means the secretary of the Corporation, or a person designated by the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee, or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be made of every meeting. The announcement shall include: (1) The time, place, and subject matter to be discussed; (2) whether the meeting or a portion thereof is to be open or closed to public observation; and (3) the name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be made at least seven calendar days before the meeting, unless a majority of the members determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be made at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the FEDERAL REGISTER for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and each recipient of funds from the Corporation, and of a council meeting to each recipient within the same state.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the members that Corportion business so requires and that no earlier announcement of the change was possible.

An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c).

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board, committee, or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board, committee, or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statue (other than the Freedom of Information Act, 5 U.S.C. 552): *Provided,* That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime, or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(g) Disclose information the premature disclosure of which would be likely significantly to frustrate implementation of a proposed Corporation action, except that this paragraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a recorded vote of a majority of the members with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) Each matter, discussion of which is to be closed to public observation, and any information that is to be withheld, shall be the subject of a separate vote, unless the matter or information is expected to involve a series of meetings. In such cases, the members may vote to close the discussion or withhold information about the same particular matter for a period of thirty days from the date of the initial discussion in the series of meetings.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon which closure is claimed to be proper under § 1622.5. The Secretary shall promptly communicate the request to the members, and a recorded vote as required by § 1622.6(a) shall be taken if any member so requests.

(d) With respect to each vote taken pursuant to § 1622.6(a)-(c), the Corporation shall, within one business day, make publicly available:

(1) A written record of the vote of each member on the question;

(2) A full statement of any action closing a meeting or portion thereof, with reference to the specific exemption listed in § 1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and a list of all persons expected to attend the closed meeting and their affiliation.

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall certify publicly whether the meeting may be closed to the public and shall state each relevant exemption. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript, or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of a meeting or any portion thereof closed to the public pursuant to paragraph (h) of § 1622.5, a transcript, a recording, or a set of minutes shall be made. Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each member's views expressed on any item and the record of each member's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by § 1622.8(a) shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by § 1622.8(a) that do not contain information that may be withheld under § 1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this Part may be pursued in accordance with Part 1602 of these regulations.

§ 1622.9 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b, including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552b, including any costs assessed against the Corporation in such litigation.

PART 1623—PROCEDURES GOVERNING SUSPENSION OF FINANCIAL ASSISTANCE

Sec.

1623.1 Purpose.
1623.2 Definition.
1623.3 Grounds for suspension.
1623.4 Suspension.
1623.5 Time extension and waiver.
1623.6 Interim funding.

AUTHORITY: Secs. 1006(b)(1), 1011 (42 U.S.C. 2996e(b)(1), (2996j).

SOURCE: 43 FR 21883, May 22, 1978, unless otherwise noted.

§ 1623.1 Purpose.

By providing procedures for prompt review that will insure informed deliberation by the Corporation when there is reason to believe that financial assistance to a recipient should be suspended, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

§ 1623.2 Definition.

"Suspension" means any action temporarily suspending or curtailing financial assistance to a recipient in whole or in part prior to the expiration of the recipient's current grant from or contract with the Corporation.

§ 1623.3 Grounds for suspension.

Financial assistance provided to a recipient may be suspended when:

(a) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of the recipient's current grant from or contract with the Corporation; or

(b) There has been substantial failure by a recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation, or guideline issued by the Corporation.

(c) In the absence of unusual circumstances, suspension shall not take place unless the Corporation has given the recipient notice of its failure and an opportunity to take effective corrective action.

§ 1623.4 Suspension.

(a) When there is reason to believe that financial assistance to a recipient should be suspended, the Corporation shall serve a written preliminary determination on the recipient stating the grounds and effective date for the proposed suspension, and identifying, with reasonable specificity, any facts or documents relied upon as justification for the suspension. The preliminary determination shall also specify any corrective action that the recipient must take to avoid or end the suspension.

(b) The preliminary determination shall also advise the recipient that it may, within 5 days of receipt of the preliminary determination, request an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not become effective. The Corporation shall designate the place for such a meeting and shall set the time at least 5 days after the recipient's request is received. The preliminary determination shall also advise the recipient that, within 10 days of its receipt of the preliminary determination and without regard to whether it requested an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at the informal meeting, if one is requested. If after considering these materials the Corporation concludes that the recipient has failed to show that the suspension should not become effective, it may suspend financial assistance to the recipient in whole or in part and under such terms and conditions as it deems proper.

(d) Written notice of the suspension shall be promptly transmitted to the recipient, and the suspension shall become effective when the notice is received by the recipient or on such later date as is specified in the notice.

(e) The Corporation employee ordering suspension may at any time rescind or modify the terms of the suspension and, on written notice to the recipient, reinstate the suspension without further proceedings under this part. In no event shall the total time of suspension exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for an additional period of time and without further proceedings under this part.

§ 1623.5 Time extension and waiver.

(a) Any period of time provided in this Part, except the total time for suspension, may, upon good cause shown and determined, be extended by the person issuing the preliminary determination under § 1623.4 or by the President.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 days of the preliminary determination.

(c) Any other provision of this Part may be waived or modified by agreement of the recipient and the Corporation, or by the President upon good cause shown and determined.

§ 1623.6 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to continued funding. Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level and legal assistance activities under the Act.

PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP

Sec.
1624.1 Purpose.
1624.2 Application.
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1624.4 Discrimination prohibited.
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1624.7 Self-evaluation.
1624.8 Enforcement.

AUTHORITY: 49 U.S.C. 794; 42 U.S.C. 2996f(a) (1) and (3).

SOURCE: 44 FR 55178, Sept. 25, 1979, unless otherwise noted.

§ 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to handicapped persons eligible for such assistance in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794 and with Sections 1007(a) (1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. Sections 2996f(a) (1) and (3), with respect to the provision of services to and employment of handicapped persons.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term: (a) "Legal services program" means any recipient, as defined by § 1600.1 of these regulations, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c)(1) "Handicapped person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (a)(1) of this section the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; The phrase includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism;

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iii) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) "Qualified handicapped person" means: (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; (2) with respect to other services, a handicapped person who meets the eligibility requirements for the receipt of such services from the legal services program.

§ 1624.4 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractural or another arrangement.

(b) A legal services program may not deny a qualified handicapped person the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve handicapped persons.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d)(1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids where the provision of such aids would not significantly impair the ability of the legal services program to provide its services.

(3) For the purpose of §§ 1624.4(d)(1) and (2), auxiliary aids include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, and other aids for persons with impaired hearing, speech or vision.

(e) A legal services program shall take reasonable steps to insure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny handicapped persons the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of Part 1620 of these regulations.

§ 1624.5 Accessibility of legal services.

(a) No qualified handicapped person shall, because a legal services program's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to handicapped persons in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, insure that new facilities that it rents or purchases are accessible to handicapped persons. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to the appropriate Regional Office certifying that the facilities covered by the lease or contract will be accessible to handicapped persons, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to insure that its services are accessible to handicapped persons who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by handicapped persons.

§ 1624.6 Employment.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that insures that discrimination on the basis of handicap does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not adminstered by the legal services program;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A legal services program may not participate in any contractual or other relationship with persons, agencies, organizations or other entities such as, but not limited to, employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations providing training and apprenticeship programs, if the practices of such person, agency, organization, or other entity have the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this paragraph.

(e) A legal services program shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include (i) making facilities used by employees readily accessible to and usable by handicapped persons, and (ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against handicapped persons, and shall insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14(a)-(d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of handicap.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of handicap.

§ 1624.7 Self-Evaluation.

(a) By January 1, 1980, a legal services program shall evaluate, with the assistance of interested persons including handicapped persons or organizations representing handicapped persons, its current facilities, policies and practices and the effects thereof to determine the extent to which they may or may not comply with the requirements of this part and the cost of structural or other changes that would be necessary to make each of its facilities accessible to handicapped persons.

(b) The results of the self-evaluation, including steps the legal services program plans to take to correct any deficiencies revealed and the timetable for completing such steps, shall be made available for review by the Corporation and interested members of the public.

§ 1624.8 Enforcement.

The procedures described in Part 1618 of these regulations shall apply to any alleged violation of this part by a legal services program.

CHAPTER XVII—NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

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PART 1700—ORGANIZATION AND FUNCTIONS

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1700.4 Functions, authority and duties.
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AUTHORITY: 5 U.S.C. 552, 20 U.S.C. 1501 et seq.

SOURCE: 39 FR 39879, Nov. 12, 1974, unless otherwise noted.

§ 1700.1 Creation.

The National Commission on Libraries and Information Science was created on July 20, 1970, by the National Commission on Libraries and Information Science Act (20 U.S.C. 1051 et seq.) as an independent agency within the executive branch.

§ 1700.2 The Commission.

The Commission is composed of fifteen members, fourteen of whom are appointed by the President, subject to confirmation by the Senate and one of whom is the Librarian of Congress. One of the members of the Commission is designated by the President as Chairman.

§ 1700.3 Responsibilities.

The Commission is responsible for the development of overall plans to provide library and information services adequate to meet the needs of the people of the United States and to utilize most effectively the nation's educational resources in assuring optimum provision of such services.

§ 1700.4 Functions, authority and duties.

(a) *Functions.* To fulfill its responsibilities, the Commission is empowered to perform the following functions:

(1) To advise the President, Congress and other Federal, state and local governmental agencies, as well as private organizations regarding library and information services.

(2) To conduct studies, surveys and analyses of the library and informational needs of the nation, including the special needs of rural areas, economically, socially or culturally deprived persons and the elderly, and the means by which these needs may be met through the establishment or improvement of information centers, libraries in educational institutions, and through public, research, special and other types of libraries.

(3) To evaluate current library and information resources and services and current library and information science programs.

(4) To develop overall plans for meeting national library and information needs and for coordinating activities at the Federal, state and local levels.

(5) To extend and improve the nation's library and information-handling capabilities by the promotion of research and development.

(b) *Authority.* In carrying out its functions, the Commission is authorized:

(1) To contract with public and private agencies.

(2) To publish and disseminate reports, findings, studies and records including, but not limited to, reports of consultants, transcripts of testimony, summary reports, and reports of other Commission findings, studies, and recommendations.

(3) To conduct hearings.

(c) *Duties.* The Commission is obligated to submit to the President and the Congress (not later than January 31 of each year) a report on its activities during the preceding fiscal year.

§ 1700.5 Executive Director.

The Executive Director is directly responsible to the Commission, works under the supervision of the Chairman, and assists him in carrying out the Commission's organizational and administrative responsibilities. His principal role is to see that other staff units work together and promptly dispose of matters for which they are responsible. He is directly responsible for internal administrative matters such as personnel and budget planning.

§ 1700.6 Office of the Commission.

The Office of the Commission is located at 1717 K Street NW., Suite 601, Washington, D.C. 20036.

PART 1701—DISCLOSURE OF INFORMATION

Sec.

1701.1 Statement of policy.
1701.2 Disclosure of records and informational materials.
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1701.5 Prompt response.
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1701.7 Appeals.

Authority: 5 U.S.C. 552, 20 U.S.C. 1501 et seq.

§ 1701.1 Statement of policy.

The records of the National Commission on Libraries and Information Science shall be available to the fullest extent possible consistent with the terms and policies of 5 U.S.C. section 552 and on request will be promptly furnished to any member of the public.

[39 FR 39879, Nov. 4, 1974]

§ 1701.2 Disclosure of records and informational materials.

(a) With the exception of records and materials exempt from disclosure pursuant to paragraph (b) of this section, any person in accordance with the procedure provided in § 1701.3 may inspect and copy any document of the National Commission on Libraries and Information Science.

(b) The provisions of 5 U.S.C. section 552 which require that agencies make their records available for public inspection and copying do not apply to Commission records which are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and information which is privileged or which relates to the business, personal or financial affairs of any person and which is furnished in confidence;

(5) Inter-agency and intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission;

(6) Personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated by the Commission since its creation on July 20, 1970, and required by section 552(a)(2) of Title 5 to be made available or published. However, in accordance with 5 U.S.C. 552(a)(4)(A) the Commission deems that publication of the index or supplements thereto would be unnecessary and impracticable. Accordingly, it shall provide copies of such index on request but shall not publish and distribute it quarterly or more frequently.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§ 1701.3 Requests.

(a) A member of the public may request records from the National Commission on Libraries and Information Science by writing to the Associate Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street, NW, Washington, D.C. 20036.

(b) A request for access to records should reasonably describe the records requested such that Commission personnel will be able to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester.

(c) Records or materials will be available for inspection and copying at the offices of the Commission during the normal business hours of regular business days or they may be obtained by mail.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§ 1701.4 Fees.

(a) A fee may be charged for direct costs of document search and duplication at the rate of $0.10 per page for copying and $5.00 per hour for time expended in identifying and locating records.

(b) A fee may be waived in whole or in part where it is determined that it is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where other circumstances indicate that a waiver is appropriate.

(c) The Commission may limit the number of copies of any document provided to any person.

[40 FR 7653, Feb. 21, 1975]

§ 1701.5 Prompt response.

(a) Within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the Associate Director shall determine whether to comply with or deny such request and shall dispatch such determination to the requester, unless an extension is made under paragraph (c) of this section.

(b) Only the Associate Director may deny a request and is the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a). When a denial is made at the behest of another agency, the person in that agency responsible for urging the denial may also be a "person responsible for the denial" if he is so advised before the Associate Director informs the requester that his request is denied.

(c) In unusual circumstances as specified in this paragraph, the Associate Director may extend the time for the initial determination of a request up to a total of ten days (excluding Saturdays, Sundays and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reason for the extension and the date upon which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

(d) If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1701.7. When no determination can be dispatched within the applicable time limit, the Associate Director shall nevertheless continue to process the request. On expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his rights to treat the delay as a denial and appeal to the Executive Director in accordance with § 1701.7. He may also ask the requester to forgo appeal until a determination is made.

[40 FR 7653, Feb. 21, 1975]

§ 1701.6 Form of denial.

A reply denying a request shall be in writing, signed by the Associate Director, and shall include (a) a specific reference to the exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, (b) brief explanation of how the exemption(s) applies to the record(s) withheld, (c) a statement that the denial may be appealed under § 1701.7 within thirty days by writing to the Executive Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street NW., Washington, D.C. 20036, and (d) that judicial review will thereafter be available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or in the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

§ 1701.7 Appeals.

(a) When the Associate Director has denied a request for records in whole or in part, the requester may, within thirty days of receipt of the letter notifying him of the denial, appeal to the Commission. Appeals to the Commission shall be in writing, addressed to the Executive Director, National Commission on Libraries and Information Science, 1717 K Street NW., Washington, D.C. 20036.

(b) The Commission will act upon an appeal within twenty days (excepting Saturdays, Sundays or legal public holidays) of its receipt unless an extension is made under paragraph (c) of this section.

(c) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays, and legal public holidays) minus any extension granted at the initial request level pursuant to § 1701.5(c). Such extension shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the appeal—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

(d) If no determination of the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the records are situated, or the District of Columbia. The requester may be asked to forgo judicial review until determination of the appeal.

(e) The Commission's determination on appeal shall be in writing. An affirmance in whole or in part of a denial on appeal shall include (1) a reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, (2) a brief explanation of how the exemption(s) applies to the record(s) withheld, and (3) a statement that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

PART 1703—GOVERNMENT IN THE SUNSHINE ACT

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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 42 FR 13553, Mar. 11, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 1703.101 Purpose.

This part sets forth the regulations under which the Commission shall engage in public decision-making processes, make public announcement of meetings at which a quorum of or all Commission members consider and determine official Commission action, and inform the public of which meetings they are entitled to observe.

§ 1703.102 Definitions.

In this part:

(a) "Meeting" means the deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate where such deliberations determine or result in the joint conduct of official Commission business.

(b) "Member" means one of the Commissioners of the National Commission on Libraries and Information Science (NCLIS) who is appointed to that position by the President with the advice and consent of the Senate.

§ 1703.103 Applicability and scope.

This part applies to deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate. Excluded from coverage of this part are deliberations of interagency committees whose composition includes Commission members and deliberations of Commission officials who are not members; individual member's consideration of official agency business circulated to the members in writing for disposition or notation; and deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in § 1703.202.

§ 1703.104 Open meeting policy.

The public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. Commission meetings involving deliberations which determine or result in the joint conduct or disposition of official Commission business are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Commission's ability to carry out its responsibilities. Meetings or portions of meetings may be closed to public observation only if closure can be justified under one of the provisions set forth in § 1703.202.

Subpart B—Procedures Governing Decisions About Meetings

§ 1703.201 Decision to hold meeting.

When Commission members make a decision to hold a meeting, the proposed meeting will ordinarily be scheduled for a date no earlier than eight days after the decision to allow sufficient time to give appropriate public notice. At the time a decision is made to hold a meeting, the time, place, and subject matter of the meeting will be determined, as well as whether the meeting is to be open or closed to the public.

§ 1703.202 Provisions under which a meeting may be closed.

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Commission determines that such portion or portions of its meeting or disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of an agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of this title). Provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtáined from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except this subparagraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(b) The Commission may exercise its authority to open to public observation a meeting which could be closed under one of the provisions of § 1703.202(a), if it would be in the public interest to do so. The Commission will determine whether the discussion comes within one of the specific exemptions. If the discussion is determined to be exempt, the Commission will consider and determine whether the public interest nevertheless requires that the meeting be open.

§ 1703.203 Decision to close meeting.

(a) Commission members may decide before the meeting to close to public observation a meeting or portion or portions thereof, or to withhold information pertaining to such meeting, only if a majority of the members vote on the record to take such action. No proxy votes on this action shall be allowed. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. If a decision is made to close a portion or portions of a meeting or a series of meetings, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

(b) For every meeting or portion thereof which Commission members have voted to close, the Chairman of NCLIS shall certify that, in his or her opinion, the meeting may properly be closed to the public. In addition, the Chairman shall state each relevant exemptive provision as set forth in § 1703.202(a). A copy of the Chairman's certification, together with a statement from the Chairman setting forth the time and place of the meeting and listing the persons present, shall be retained by the Commission.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 1703.202(a), (5), (6), or (7), the Commission members, upon request of any of the Commissioners, shall decide by recorded vote whether to close such portion. If a closure decision is made, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

§ 1703.204 Public availability of recorded vote to close meeting.

Within one day of any vote taken on a proposal to close a meeting, the Commission shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Commission shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 1703.205 Public announcement of meeting.

(a) Except as provided in §§ 1703.207 and 1703.208, the Commission shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting;

(2) Whether the meeting is to be open or closed; and

(3) Name and telephone number of agency official who will respond to requests for information about the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting was closed to protect, the subject matter shall not be announced.

§ 1703.206 Providing information to the public.

Individuals or organizations interested in obtaining copies of information available in accordance with § 1703.204 may request same under provisions set forth in §§ 1703.402 and 1704.404. Individuals or organizations having a special interest in activities of the Commission may request the Executive Director to the Commissioners to place them on a mailing list for receipt of information available under § 1703.205. The Commission shall provide information to publications whose readers are likely to have a special interest in the work of the Commission.

§ 1703.207 Change in meeting plans after public announcement.

(a) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

§ 1703.208 Meetings for extraordinary agency business.

Where agency business so requires, Commission members may decide by majority, recorded vote to schedule a meeting for a date earlier than eight days after the decision. Such a decision would obviate the general requirement for a public announcement at least one week before the scheduled meeting. At the earliest practicable time, however, the Commission will announce publicly the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, and the name and telephone number of an agency official who will respond to requests for information about the meeting.

§ 1703.209 Notice of meeting in Federal Register.

Immediately following each public announcement required by this subpart, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER:

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of an agency official who will respond to requests for information about the meeting.

Subpart C—Conduct of Meetings

§ 1703.301 Meeting place.

Meetings will be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, every reasonable effort will be made to provide alternative facilities.

§ 1703.302 Role of observers.

The public may attend open meetings for the sole purpose of observation and may not record any of the discussions by means of electronic or other devices or cameras unless approved in advance by the Executive Committee of the Commission. Observers may not participate in meetings unless expressly invited or create distractions to interfere with the conduct and disposition of Commission business. Such participation or attempted participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the Commission. When meetings are partially closed, observers will leave the meeting room promptly upon request so that discussion, of matters exempt under provisions of Subpart B of this part, § 1703.202, may take place expeditiously.

Subpart D—Maintenance of Meeting Records

§ 1703.401 Requirements for maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public must be made and retained for two years or for one year after the conclusion of the Commission proceeding involved in the meeting. The record of any portion of a meeting closed to the public shall be a transcript or electronic recording.

(b) When minutes are produced, such minutes shall fully and clearly describe all matters discussed, and will provide a full and accurate summary of any actions taken and the reasons expressed therefor. The minutes must also reflect the vote of each member on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents produced under provisions of paragraph (b) of this section shall be retained by the agency as part of the minutes of the meeting:

(1) Certification by the Chairman that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time and place of the meeting and listing the persons present.

§ 1703.402 Availability of records to the public.

(a) The Commission shall make promptly available to the public the minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of § 1703.202(a) of this report. Copies of such minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) The nonexempt part of the minutes shall be in the official custody of the Executive Director of the Commission. Appropriate facilities will be made available to any persons who make a request to review these records.

(c) Requests for copies of nonexempt parts of minutes, shall be directed to the Executive Director of the Commission. Such requests shall identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount.

§ 1703.403 Requests for records under Freedom of Information and Privacy Acts.

Requests to review or obtain copies of records other than the minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act (5 U.S.C. 552a).

§ 1703.404 Copying and transcription charges.

(a) The Commission will charge fees for furnishing records at the rate of ten cents per page for photocopies and at the actual cost of transcription. When the anticipated charges exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days. Requested information will not be released until the deposit is received. Fees shall be paid by check or money order made payable to the National Commission on Libraries and Information Science.

(b) The Executive Director of the Commission has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Subpart E—Administrative Review

§ 1703.501 Administrative Review.

Any person who believes a Commission action governed by this part to be contrary to the provisions of this part may file an objection in writing with the Executive Director to the Commissioners. Wherever possible, the Executive Director will respond within two working days to objections concerning decisions to close meetings or portions thereof. Responses to objections concerning matters other than closed meetings will be made within ten working days.

Subpart F—Judicial Review

§ 1703.601 Judicial review.

Any person may bring an action in a United States District Court to challenge or enforce the provisions of this part or the manner of their implementation. Such action may be brought prior to or within sixty days after the meeting in question, except that if proper public announcement of the meeting is not made, the action may be instituted at any time within sixty days after such announcement is made. An action may be brought where the Commission meeting was or is to be held or in the District of Columbia.

PART 1705—PRIVACY REGULATIONS

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1705.12 Exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 43 FR 47195, Oct. 13, 1978, unless otherwise noted.

§ 1705.1 Purpose and scope.

These procedures provide the means by which individuals may safeguard their privacy by obtaining access to, and requesting amendments or corrections in, information, if any, about these individuals which is contained in the White House Conference Delegate/Alternate Certification File (D/AC File), which is under the control of the National Commission on Libraries and Information Science (hereafter, the Commission).

§ 1705.2 Definitions.

For the purpose of these procedures:

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item or set of items about an individual that is maintained by the Commission in either hard copy or computerized form, including name, residence and other information obtained from the form, "Certification of State/Territorial Delegates/Alternates to the White House Conference on Library and Information Services."

(d) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1705.3 Procedures for requests pertaining to individual records in the D/AC File.

(a) An individual who wishes to know whether the D/AC File contains a record pertaining to him or her shall submit a written request to that effect to the System Manager at the Commission. The System Manager shall, within 10 days of receipt of such submission, inform the individual whether the D/AC File contains such a record.

(b) An individual who desires access to any identified record shall file a request therefor addressed to the System Manager indicating whether such individual intends to appear in person at the Commission's offices or whether he or she desires to receive a copy of any identified record through the mail.

§ 1705.4 Times, places, and requirements for identification of individuals making requests.

(a) An individual who, in accord with § 1705.3(b) indicated that he or she would appear personally shall do so at the Commission's offices, 1717 K Street NW., Suite 601, Washington, D.C., between the hours of 8:30 a.m. and 4 p.m. Monday through Friday (legal holidays excluded) and present either: (1) The response from the System Manager indicating that such a record exists; or (2) a copy of the executed certification form, as well as another suitable form of identification, such as a valid drivers license or equivalent.

(b) In response to a request for mail delivery, the Commission will mail only to the home address appearing in the D/AC File a copy of the record for that individual within 10 working days.

§ 1705.5 Disclosure of requested information to individuals.

Upon verification of identity, the System Manager shall disclose to the individual (a) the information contained in the record which pertains to that individual; and (b) the accounting of disclosures of the record, if any, required by 5 U.S.C. 552a(c).

§ 1705.6 Request for correction or amendment to the record.

If a person wishes a change to be made in the record, he or she should follow the procedures for making changes which are included in the instructions accompanying the certification form by which the information was obtained. Copies of these instructions will be mailed to any delegate/alternate upon request.

§ 1705.7 Agency review of request for correction or amendment of the record.

Within 10 days of the receipt of the request to correct or to amend the record, the System Manager will acknowledge in writing such receipt and promptly either: (a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete and inform the individual of same: or (b) inform the individual of his or her refusal to correct or amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 1705.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the System Manager to correct or to amend his or her record may submit a request for review of such refusal to the Chairman of the Commission, 1717 K Street NW., Suite 601, Washington, D.C. 20036. The Chairman will, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Chairman extends such 30-day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1705.9 Disclosure of record to a person other than the individual to whom the record pertains.

An individual to whom a record is to be disclosed in person may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 1705.10 Fees.

(a) The Commission will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Commission will not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish him or her with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual) the Commission will charge a fee of $0.25 per page (maximum per page dimension of 8½ by 13 inches) to the extent that the request exceeds $5 in cost to the Commission. Requests not exceeding $5 in cost to the Commission will be met without cost to the requester.

§ 1705.11 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than 5 years or both to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)), makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i) (1) and (2) of the Privacy Act (5 U.S.C. 552a(i) (1) and (2)) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

§ 1705.12 Exemptions.

No Commission records system is exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

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CHAPTER XVIII—HARRY S TRUMAN SCHOLARSHIP FOUNDATION

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PART 1800—PRIVACY ACT OF 1974

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1800.10 Fees.

AUTHORITY: 5 U.S.C. 552a; Pub. L. 93-579.

SOURCE: 41 FR 52677, Dec. 1, 1976, unless otherwise noted.

§ 1800.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Harry S Truman Scholarship Foundation (hereafter known as the Foundation) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1800.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Foundation, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term "system of records" means a group of any records under the control of the Foundation from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1800.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a request to the Deputy Executive Secretary of the Foundation to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to review his or her record.

§ 1800.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Deputy Executive Secretary of the Foundation pursuant to § 1800.3 shall present the request at the Foundation offices, 712 Jackson Place, NW., Washington, D.C. 20006, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Foundation's offices with a form of identification which will permit the Foundation to verify that the individual is the same individual as contained in the record requested.

§ 1800.5 Access to requested information to the individual.

Upon verification of identity the Foundation shall disclose to the individual the information contained in the record which pertains to that individual.

§ 1800.6 Request for correction or amendment to the record.

The individual should submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 1800.4.

§ 1800.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Deputy Executive Secretary of the Foundation will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Foundation for the individual to request a review of that refusal.

§ 1800.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Deputy Executive Secretary of the Foundation to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Secretary, Harry S Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, D.C. 20006. The Executive Secretary will, not later than thirty working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Executive Secretary extends such thirty day period. If, after his or her review, the Executive Secretary also refuses to correct or to amend the record in accordance with the request, the individual may file with the Foundation a concise statement setting forth the reasons for his or her disagreement with the refusal of the Foundation and may seek judicial review of the Executive Secretary's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1800.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Foundation will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Foundation's notices of its systems of records.

§ 1800.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

PART 1801—HARRY S TRUMAN SCHOLARSHIP PROGRAM

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AUTHORITY: Pub. L. 93-642, 88 Stat. 2276 (20 U.S.C. 2001-2012).

SOURCE: 45 FR 81047, Dec. 9, 1980, unless otherwise noted.

Subpart A—General

§ 1801.1 Annual Truman Scholarship competition.

Each year, the Harry S Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

§ 1801.2 Truman Scholars are selected from each State.

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets the eligibility criteria in § 1801.3. In addition, the Board of Trustees may select additional Scholars-at-Large.

(b) As used in this part, "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

§ 1801.3 Students eligible for nomination.

A student is eligible to be nominated as a Truman Scholar if he or she: (a) Is a matriculated student pursuing a degree at an institution of higher education during the year in which nominated;

(b) Will be a junior pursuing a bachelor's degree as a full-time student at an institution of higher education the following academic year;

(c) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(d) Has an undergraduate average of at least "B" or its equivalent and ranks in the upper fourth of his or her class; and

(e) Is a U.S. citizen, a U.S. national, or a permanent resident of the Trust Territory of the Pacific Islands or the Commonwealth of the Northern Mariana Islands.

§ 1801.4 Definitions.

As used in this part:

"Academic year" means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, two trimesters, three quarters, or the equivalent.

"Foundation" means the Harry S Truman Scholarship Foundation.

"Full-time student" means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more than the length of time normally taken at the institution of higher education.

"Graduate study" means courses of study beyond the baccalaureate level which may lead to an advanced degree.

"Institution of higher education" has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

"Junior" means a student who has received credit for more than one-half of the coursework required to complete the second year of college, but not more than one-half of the coursework required to complete the third year of college.

"President" means the principal official responsible for the overall direction of the operations of an institution of higher education.

"Public service" means a career at any level or in any function of government, including, for example, government service activities in the health, engineering or military fields, as well as other fields of governmental activity.

"Resident" means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account parent's place of residence, eligibility for "in-State" tuition rates at public institutions of higher education, and place of registration to vote.

"Senior" means the academic level recognized by the institution of higher education as having fourth year standing.

"Sophomore" means the academic level recognized by the institution of higher education as having second year standing.

"Work-experience program" means employment approved by the Foundation that involves an intensive period of practical work in a Federal, State, or local government office.

Subpart B—Nominations

§ 1801.10 Nomination by institution of higher education.

To be considered in the competition a student must be nominated by the institution of higher education that he or she attends.

§ 1801.11 Annual nomination.

(a) Except as provided in §§ 1801.12 and 1801.13, each institution of higher education may nominate up to two students annually. If an institution chooses to nominate two students, the two may have legal residence in the same State, or in different States.

(b) All nominations must be made by the President of the institution or the designated Faculty Representative, after the President asks for and considers recommendations by the faculty.

§ 1801.12 Institutions with more than one campus.

If an institution of higher education has more than one component separately listed in the current edition of the publication Education Directory: Colleges and Universities (Published by the U.S. Department of Education), each component of the institution may nominate up to two students. However, a component that is organized solely for administrative purposes and has no students enrolled may not nominate a student.

§ 1801.13 Two-year institutions.

If an institution of higher education does not offer education beyond the sophomore level, the institution may nominate only students who will be a junior the following year at another institution of higher education.

§ 1801.14 Submission of application to the Foundation.

To nominate a student for the competition, the institution of higher education must send the student's application to the Foundation.

§ 1801.15 Faculty representative.

(a) Each institution which nominates a student or which has a Truman Scholar in attendance must give the Foundation the name, business address, and business telephone number of a member of the faculty who will serve as liaison between the institution and the Foundation.

(b) It is the role of this Faculty Representative to publicize the Truman Scholarship Program on campus, solicit recommendations of potential nominees from members of the faculty, and insure that the institution's nomination with all required supporting documents, is forwarded to the Foundation by the required deadline.

§ 1801.16 Closing date for receipt of nominations.

The Foundation publishes an annual notice in the FEDERAL REGISTER of the date, usually December 1, by which institutions of higher education must submit their nominations and all supporting documents in order to be guaranteed consideration by the Foundation.

§ 1801.17 Contents of application.

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following: (1) A statement that the student is an applicant for a Truman Scholarship;

(2) A statement that the student plans to pursue a career in public service;

(3) A list of the student's public service activities, such as those associated with government agencies, community groups, political campaigns, and charities;

(4) A list of leadership positions the student has held during high school and during the first two years of undergraduate school;

(5) A statement that the student is willing to participate in an internship or seminar sponsored by the Foundation;

(6) A statement of interest in a career in government, written by the student, that shows in some detail how the student's academic program and overall education plans will prepare him or her for that chosen career.

(c) In support of each nomination the following documents must also be submitted: (1) An essay of 600 words or less written by the student that analyzes a particular public policy issue of interest to the student.

(2) Transcripts of the student's high school and undergraduate scholastic record; and

(3) Three letters of recommendation.

One of these letters must be written by a faculty member in the student's field of study, and one must be written by another person who can speak to the student's potential for a career in public service.

Subpart C—The Competition

§ 1801.20 Selection of semifinalists.

The Foundation selects semifinalists from the students who are nominated.

§ 1801.21 Evaluation criteria.

(a) The Foundation selects semi-finalists from the students nominated on the basis of the following criteria: (1) The extent to which the student has shown an outstanding potential for leadership in the public service; and

(2) The student's academic performance.

(b) The Foundation evaluates each student solely on the basis of the information required under § 1801.17.

§ 1801.22 Interview of student with regional review panel.

The Foundation invites each semi-finalist to an interview with a regional review panel.

§ 1801.23 Recommendation by panel.

(a) Each regional review panel recommends two finalists from each State to the Foundation. In addition, the Board of Trustees may authorize each regional review panel to recommend additional "Scholars-at-Large" from the States in its region.

(b) The finalists must be recommended by the panel in the order of their qualification to be a Truman Scholar.

(c) The recommendations are based on the material required under § 1801.17 and, as determined in the interview, the panel's assessment of each semifinalist's potential for leadership in government.

§ 1801.24 Further recommendations or nominations.

(a) The Foundation may ask a regional review panel to submit the names of additional finalists for consideration, or may ask institutions of higher education to submit additional nominations.

(b) If additional nominations are made under paragraph (a) of this section, the applications must meet the requirements of Subpart B of this part, and are considered under the procedures of this subpart.

§ 1801.25 Selection of Truman Scholars by the Foundation.

(a) The Foundation names Truman Scholars after receiving recommendations from the regional review panels.

(b) The Foundation may name an alternate for each Truman Scholar. The alternate receives the scholarship if: (1) The person named as a Truman Scholar is not able to begin studies at the start of the following academic year, and

(2) Payments are not postponed under § 1801.54.

Subpart D—Graduate Study and the Work-Experience Program

§ 1801.30 Continuation into graduate study.

(a) The Foundation will not conduct a new and separate competition for graduate scholarships, nor will it add new Truman Scholars at the graduate level.

(b) Only Truman Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

§ 1801.31 Approval of graduate programs by the Foundation.

(a) Early in their senior year, Truman Scholars desiring Foundation support for graduate study must submit a proposed program of graduate study to the Foundation for approval. The proposed program may subsequently be changed with the approval of the Foundation.

(b) Foundation approval of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in government that specifies in some detail how their graduate program and their overall educational plans will prepare them for their chosen career goal.

(d) Scholars may offer relevant and appropriate fields of study that will help prepare them for a career in government.

§ 1801.32 Eligible colleges and degree programs.

(a) Truman Scholars at the graduate level may study at any accredited college or university that offers graduate study.

(b) They may enroll in any relevant graduate program, including masters of arts, masters of public administration, masters of business administration, law, medicine, engineering or doctoral study.

(c) Foundation support for graduate study is restricted to two full-time years of study.

§ 1801.33 The work-experience program.

(a) The Foundation encourages all Truman Scholars without substantial previous government experience to participate in a voluntary program of work experience in the public service. This would typically occur after the completion of the baccalaureate degree.

(b) These apprenticeships are intensive periods of practical work ranging up to a year in length in a Federal, State, or local government office arranged with the approval of the Foundation.

(c) Although the Foundation is not authorized to provide financial support during this period, it will attempt to assist Scholars to make appropriate work experience arrangements.

Subpart E—Amount of Payments to Students

§ 1801.40 Travel expenses of semi-finalists.

(a) Each semi-finalist may receive reimbursement for the actual and necessary expenses of round trip transportation to the location of the regional review panel.

(b) The Foundation uses the Federal Travel Regulations (referenced in 41 CFR 101-7.003) as a guide to determine the amount of the reimbursement.

(c) The Foundation informs semi-finalists of the procedures for obtaining this reimbursement.

§ 1801.41 Scholarship awards.

Each Truman Scholar receives annually $5000 or the cost of tuition, fees, books, and room and board, whichever is less.

§ 1801.42 Definition of "fee".

As used in this part, "fee" means a typical and usual non-refundable charge by the institution of higher education for a service, a privilege, or the use of property which is required for Scholars' enrollment and registration.

§ 1801.43 Allowance for books.

The cost allowed for a student's books is $180 per year.

§1801.44 Allowance for room and board.

The cost allowed for a student's room and board is the amount the institution of higher education reports to the Foundation as the average cost of room and board for the student's institution, given the type of housing the student occupies.

§ 1801.45 Deduction for benefits from other sources.

(a) The cost allowed for a student's tuition, fees, books, and room and board must be reduced to the extent that the cost is paid for by another organization.

(b) This section does not apply to benefits the student receives from the Veterans' Administration.

Subpart F—Payment Conditions and Procedures

§ 1801.50 Acceptance of the scholarship.

To receive any payment, a Truman Scholar must sign an acceptance of the scholarship and submit it to the Foundation.

§ 1801.51 Report at the beginning of each term.

The Truman Scholar must submit the following material to the Foundation at the beginning of each term: (a) A statement of the student's costs for tuition, fees, books, and room and board.

(b) A certification by an authorized official of the institution that the statement of those costs is accurate.

(c) A certification of the amounts of those costs that are paid for by another organization.

(d) A certification by an authorized official of the institution that the Truman Scholar: (1) Is a full-time student and is taking a course of study, training, or other educational activities to prepare for a career in public service; and

(2) Is not engaged in gainful employment that interferes with the Scholar's studies.

(e) A certification by an authorized official of the institution of whether the Truman Scholar is in academic good standing.

§ 1801.52 Definition of "term".

As used in this part, "term" means the period which the institution of higher education uses to divide its academic year: Semester, trimester, or quarter.

§ 1801.53 Payment schedule.

The Foundation will pay the Truman Scholar a portion of the award after each report submitted under § 1801.51.

§ 1801.54 Postponement of payment.

(a) A Truman Scholar may request the Foundation to postpone one or more payments because of sickness or other circumstances.

(b) If the Foundation grants a postponement, it may impose such conditions as it decides are necessary.

Subpart G—Duration of Scholarship

§ 1801.60 Renewal of scholarship.

It is the intent of the Foundation to renew scholarship awards for a period not to exceed a total of four academic years (consisting of the junior year, the senior year, and up to two academic years of graduate study), only in accordance with the regulations established by its Board of Trustees, and subject to an annual review for compliance with the requirements of this part.

§ 1801.61 Termination of scholarship.

(a) The Foundation may terminate a scholarship under the following specific conditions: (1) If the Truman Scholar does not meet the criteria in § 1801.51(e) for two consecutive terms, or

(2) If the Truman Scholar does not meet the criteria in § 1801.31, § 1801.51(d) or § 1801.3(e).

(b) Before it terminates a scholarship under these conditions the Foundation gives the student notice and an opportunity to be heard with respect to the grounds for termination.

§ 1801.62 Recovery of scholarship funds.

If a scholarship is terminated or if the student resigns a scholarship, all scholarship funds which have not been spent or which the student may recover must be returned to the Foundation.

PART 1802—PUBLIC MEETING PROCEDURES OF THE BOARD OF TRUSTEES

Sec.
1802.1 Purpose and scope.
1802.2 Definitions.
1802.3 Open meetings.
1802.4 Grounds on which meetings may be closed, or information may be withheld.
1802.5 Procedure for announcing meetings.
1802.6 Procedure for closing meetings.
1802.7 Transcripts, recordings, minutes of meetings.

AUTHORITY: 5 U.S.C. 552b(g); 20 U.S.C. 2001-2012.

SOURCE: 42 FR 14722, Mar. 16, 1977, unless otherwise noted.

§ 1802.1 Purpose and scope.

The Harry S Truman Scholarship Foundation will provide the public with the fullest practical information regarding its decision-making processes while protecting the rights of individuals and the Foundation's abilities to carry out its responsibilities. Accordingly, these procedures apply to meetings of the Board of Trustees, Harry S Truman Scholarship Foundation, including committees of the Board of Trustees.

§ 1802.2 Definitions.

As used in this part:

"Board" or "Board of Trustees" means the collegial body that conducts the business of the Harry S Truman Scholarship Foundation as specified in section 5(b), Pub. L. 93-642 (20 U.S.C. 2004), consisting of:

(a) Eight persons appointed by the President, by and with the advice and consent of the Senate;

(b) Two members of the Senate, one from each political party, appointed by the President of the Senate;

(c) Two members of the House of Representatives, one from each political party, appointed by the Speaker; and

(d) The Commissioner of Education or his designee, who serves as an ex officio member of the Board.

"Chairman" means the presiding officer of the Board.

"Committee" means any formally designated subdivision of the Board, consisting of at least two Board members, authorized to act on behalf of the Board, including the Board's standing committees and any ad hoc committees appointed by the Board for special purposes.

"Executive Secretary" means the individual appointed by the Board to serve as the chief executive officer of the Foundation.

"Meeting" means the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include: (1) Deliberations to open or close a meeting, to establish the agenda for a meeting, or to release or withhold information, required or permitted by § 1802.5 or § 1802.6, (2) notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually by telephone or telegram and (3) instances where individual members, authorized to conduct business on behalf of the Board or to take action on behalf of the Board, meet with members of the public or staff. Conference telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

"Member" means a member of the Board of Trustees.

"Staff" includes the employees of the Harry S Truman Scholarship Foundation, other than the members of the Board.

§ 1802.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board of Trustees other than in accordance with these procedures. Every portion of every meeting of the Board of Trustees or any committees of the Board shall be open to public observation subject to the exceptions provided in § 1802.4.

(b) Open meetings will be attended by members of the Board, certain staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate. The use of cameras and disruptive recording devices will not be permitted.

§ 1802.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or a committee finds that the public interest requires otherwise, the open meeting requirement as set forth in the second sentence of § 1802.3(a) shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§ 1802.5 and 1802.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee, as applicable, properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(a) Disclose matters that are: (1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of the Harry S Truman Scholarship Foundation;

(c) Disclose matters specifically exempted from disclosure by statute (other than section 552, Title 5, United States Code), provided that such statute: (1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial and financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (1) Interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except that this paragraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the issuance of a subpoena, or Foundation participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Foundation of a particular case of formal adjudication pursuant to the procedures in Section 554 of Title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing.

§ 1802.5 Procedure for announcing meetings.

(a) Except to the extent that such information is exempt from disclosure under the provisions of § 1802.4, in the case of each Board or committee meeting, the Executive Secretary, acting at the direction of the Board, shall publish in the FEDERAL REGISTER, at least seven days before the meeting, the following information:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The seven-day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. The Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting may be changed following the public announcement required by paragraph (a) only if the Executive Secretary, acting at the direction of the Board, publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting, or the determination of the Board or committee, as applicable, to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraph (a) only if (1) a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible, and (2) the Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) The "earliest practicable time" as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(f) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

§ 1802.6 Procedure for closing meetings.

(a) Action to close a meeting or a portion thereof, pursuant to the exemptions set forth in § 1802.4, shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action. Any such action shall include a specific finding by the Board that an open meeting is not required by the public interest.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 1802.4 or with respect to any information which is proposed to be withheld under § 1802.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in paragraph (e), (f), or (g) of § 1802.4, the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board may ascertain by notation voting, or similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting following, or

(2) Whether the members wish to close the meeting.

(f) Within one day of any vote taken pursuant to paragraph (a), (b), (c) or (e), of this section, the Board or committee shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within one day of the vote taken pursuant to paragraph (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of § 1802.4.

(g) For every meeting closed pursuant to § 1802.4, the General Counsel of the Harry S Truman Scholarship Foundation shall certify before the meeting may be closed that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by § 1802.7.

§ 1802.7 Transcripts, recordings, minutes of meetings.

(a) The Board of Trustees shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting closed to the public pursuant to paragraph (j) of § 1802.4, the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Public availability of records shall be as follows:

(1) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Foundation shall make available to the public, in the offices of the Harry S Truman Scholarship Foundation, 712 Jackson Place NW., Washington, D.C., the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the General Counsel determines to contain information which may be withheld under § 1802.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identify of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the General Counsel to withhold information pursuant to paragraph (d)(1) of this section may be appealed to the Board. The appeal shall be circulated to individual Board members. The Board shall make a determination to withhold or release the requested information within twenty days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

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CHAPTER XIX—NATIONAL COMMISSION ON THE OBSERVANCE OF INTERNATIONAL WOMEN'S YEAR

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PART 1901—GENERAL

Sec.
1901.1 Definitions of terms used in this chapter.
1901.2 Words importing gender.

§ 1901.1 Definitions of terms used in this chapter.

(a) "Commission" means the National Commission on the Observance of International Women's Year, 1975 established by Executive Order 11832, 3 CFR 106, 40 FR 2415, January 13, 1975, Pub. L. 94-167, 89 Stat. 1003, December 23, 1975.

(b) "Conference" means the National Women's Conference to be organized and convened by the Commission in accordance with Pub. L. 94-167.

(c) "Coordinating Committee" means the Coordinating Committee in each State designated by the Commission to organize and conduct a meeting in the State in preparation for the National Women's Conference.

(d) "State" includes the fifty States and the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands, unless otherwise specified.

(e) "State Meeting" means the meetings organized and conducted in each State by the Coordinating Committee in preparation for the National Women's Conference.

(f) "Act" means Pub. L. 94-167, 89 Stat. 1003, December 23, 1975.

(g) "Conference session," "plenary session," or "session" refers to the meetings which may be held at the following times:

Session I, November 19, morning.
Session II, November 19, afternoon.
Session III, November 19, evening.
Session IV, November 20, afternoon.
Session V, November 21, morning.

(E.O. 11832, 3 CFR 106, 40 FR 2415, Jan. 13, 1975; Pub. L. 94-167, 89 Stat. 1003, Dec. 23, 1975)

[42 FR 57128, Nov. 1, 1977]

§ 1901.2 Words importing gender.

As used in this chapter, unless the context requires a different meaning, words importing the feminine gender include both genders.

(E.O. 11832, 3 CFR 106, 40 FR 2415, Jan. 13, 1975; Pub. L. 94-167, 89 Stat. 1003, Dec. 23, 1975)

[42 FR 57128, Nov. 1, 1977]

PART 1902—STATE MEETINGS, FINANCIAL ASSISTANCE

Subpart A—Allocation of Grant Funds

Sec.
1902.1 Purpose of grants.
1902.2 Formula for allocating funds.
1902.3 Funds available to Coordinating Committees.

Subpart B—Awarding of Grants

1902.4 Eligible grantees.
1902.5 Determination of eligibility.
1902.6 Advances on the grant.

Subpart C—Fiscal Requirements

1902.7 Fiscal officers and signatories.
1902.8 Scope of expenditures.
1902.9 Limitations on expenditures of grant funds.
1902.10 Grant revisions.
1902.11 Period of incurring expenditures.
1902.12 Recordkeeping requirements.
1902.13 Financial reporting requirements.
1902.14 Unexpended funds.
1902.15 Overruns.
1902.16 Disallowance of expenditures.

AUTHORITY: E.O. 11832, 3 CFR 106, 40 FR 2415, Jan. 13, 1975, Pub. L. 94-167, 89 Stat. 1003, Dec. 23, 1975.

SOURCE: 42 FR 16412, Mar. 28, 1977, unless otherwise noted.

Subpart A—Allocation of Grant Funds

§ 1902.1 Purpose of grants.

Funds shall be made available by the Commission to the eligible Coordinating Committee in each State for all necessary and lawful expenses in connection with the State Meeting and participation in the Conference.

§ 1902.2 Formula for allocating funds.

The amount of funds available to each Coordinating Committee shall be computed as follows:

(a) The Coordinating Committee in each State shall be entitled to a grant in an amount bearing the same ratio to $2,600,000 as the product in paragraph (b) of this section bears to the sum of the corresponding products for all the States.

(b) The allocation factor for each State is the product of (1) 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States and (2) the population of the State.

(c) The per capita income data used in paragraph (b) of this section is the average per capita income for the calendar years 1971, 1972, and 1973 as published by the Bureau of Economic Analysis, Department of Commerce, Survey of Current Business, dated August 1973, Vol. 52, No. 8. Population data used in paragraph (b) is the population as of July 1, 1974, as published by the Bureau of Census Series P-25-533, dated October 1974.

(d) However, if the amount computed in paragraph (a) of this section is less than $25,000, the available funds shall be increased to $25,000; and if the amount computed is more than $100,000, the available funds shall be decreased to $100,000.

§ 1902.3 Funds available to Coordinating Committees.

Computing the amounts in § 1902.2 results in the following allocation of available funds to the respective Coordinating Committees of each State:

GRANTS TO STATES

State	Available funds
Alabama	$53,030
Alaska	25,000
American Samoa	25,000
Arizona	27,431
Arkansas	30,866
California	100,000
Colorado	29,815
Connecticut	29,943
Delaware	25,000
District of Columbia	25,000
Florida	99,529
Georgia	66,252
Guam	25,000
Hawaii	25,000
Idaho	25,000
Illinois	100,000
Indiana	65,671
Iowa	35,042
Kansas	26,915
Kentucky	48,385
Louisiana	54,909
Maine	25,000
Maryland	44,365
Massachusetts	65,304
Michigan	99,327
Minnesota	47,924
Mississippi	36,364
Missouri	59,854
Montana	25,000
Nebraska	25,000
Nevada	25,000
New Hampshire	25,000
New Jersey	72,434
New Mexico	25,000
New York	100,000
North Carolina	74,383
North Dakota	25,000
Ohio	100,000
Oklahoma	37,314
Oregon	28,410
Pennsylvania	100,000
Puerto Rico	50,867
Rhode Island	25,000
South Carolina	41,172
South Dakota	25,000
Tennessee	58,856
Texas	100,000
Trust Territory	25,000
Utah	25,000
Vermont	25,000
Virgin Islands	25,000
Virginia	61,061
Washington	41,078
West Virginia	25,973
Wisconsin	57,806
Wyoming	25,000
Total	2,595,295

Subpart B—Awarding of Grants

§ 1902.4 Eligible grantees.

Grants will be made only to the Coordinating Committee.

§ 1902.5 Determination of eligibility.

To receive a grant a Coordinating Committee must:

(a) Provide assurances satisfactory to the Commission that the Coordinating Committee will hold a State Meeting prior to the National Conference, such Meeting to be organized and conducted in accordance with: (1) The goals of the Conference as set forth in section 3(b) of Pub. L. 94-167, and (2) the Commission's regulations, and (3) such fiscal and technical requirements as the Commission may order.

(b) Submit to and obtain approval by the Commission of a comprehensive budget proposal.

(c) Certify that it will have, before any expenditures of grant funds, the two bonded signatories specified in § 1902.7.

§ 1902.6 Advances on the grant.

When the Commission, in its sole discretion, determines that the Coordinating Committee is eligible for the grant, the Commission will transmit to the Coordinating Committee an initial advance on the grant. The Coordinating Committee may from time to time request additional advances on the grant, such requests to be accompanied by a report of its expenditures and its justification for the additional sums requested.

Subpart C—Fiscal Requirements

§ 1902.7 Fiscal officers and signatories.

(a) Each Coordinating Committee shall designate a competent fiscal officer or agent who shall be responsible for administering, maintaining records of, and reporting on grant funds and expenditures according to the regulations and requirements of the Commission.

(b) The fiscal officer or agent designated under paragraph (a) of this section, and the Chair of the Coordinating Committee, shall each be bonded and shall be signatories to all transactions funded by Commission grants.

(c) All persons doing business with the Coordinating Committee shall be given notice that only the signatories designated in this section are authorized to incur obligations on behalf of the Coordinating Committee.

§ 1902.8 Scope of expenditures.

Generally, grant funds awarded to a Coordinating Committee may be used, subject to the limitations set forth in these regulations, for the following:

(a) Accounting, audit and legal services;

(b) Bonding fees;

(c) Development; acquisition or printing of educational materials;

(d) Equipment rental as necessary;

(e) Expenses incident to travel by, and honoraria to, speakers and resource persons invited by the Coordinating Committee, as necessary;

(f) Expenses incident to travel by Coordinating Committee members to attend planning meetings outside their home city;

(g) Expenses incident to travel by participants approved by the Coordinating Committee in connection with the State Meeting or the National Conference;

(h) Hiring of part-time or full time staff, including consultants;

(i) Office supplies and materials including photocopying, layout, and design costs;

(j) Telephone, telegraph, postage and mailing house services;

(k) Transportation and space rentals and contractual services necessary for holding the State Meetings;

(l) Other related activities.

§ 1902.9 Limitations on expenditures of grant funds.

Funds from Commission grants shall not be used by a Coordinating Committee for any of the following:

(a) Advertising, except for recruitment of personnel or participants required to carry out the State Meeting;

(b) Alcoholic beverages;

(c) Contingency funds or reserves;

(d) Entertainment, other than as an educational portion of a Meeting, but unallowable are costs of amusement, social activities, luncheon meetings, except business meetings, and coffee breaks including entertainment and incidental costs related thereto;

(e) Equipment purchase, unless the net cost of purchase and resale would be less than rental costs and the purchase has been justified in the budget proposal and duly approved in advance of the purchase;

(f) Excess baggage, unless it consists of approved Meeting or Conference materials;

(g) Fines, penalties, or bad debt costs;

(h) Foreign travel, except that travel between the fifty States and American Samoa, Guam, the Trust Territories, Puerto Rico and the Virgin Islands shall not be considered foreign travel for this purpose;

(i) Gifts and gratuities, except that generally accepted service gratuities at standard rates are allowed;

(j) Insurance and indemnifications, except as authorized by the Commission;

(k) Lobbying activities;

(l) Meals, unless as part of approved subsistence in connection with travel or as part of a business meeting or Conference package;

(m) Membership charges or dues in other organizations;

(n) Payments to or on behalf of Federal employees acting in connection with their official duties;

(o) Subgrants, unless approved in advance by the Commission;

(p) Supplies other than those needed in support of the Meeting;

(q) Tobacco;

(r) Travel on non-American carriers or from any further point than traveller's place of residence; or detour or layover expenses beyond twelve hours unless emergency circumstances so require and are explained; or travel which is not by the most direct route or not economy fare unless emergency circumstances so require and are explained; or which is not in accord with other instructions issued by the Commission;

(s) Any other expenditures prohibited by applicable Federal laws or regulations.

§ 1902.10 Grant revisions.

(a) If the Coordinating Committee finds it necessary to make a substantial change in its grant budget after the Commission has approved the award of grant funds, the Coordinating Committee shall request permission to do so in writing and must secure the Commission's approval before making such change.

(b) For the purposes of this section, a substantial change in the grant budget of a Coordinating Committee shall be (1) any change in the overall grant amount, (2) elimination or addition of any line item, or (3) any change of more than $2,000 or 25 percent of the total amount, whichever is less, in any line item category of the budget.

§ 1902.11 Period of incurring expenditures.

The grant agreement between the Commission and the Coordinating Committee shall specify starting and ending dates. Budget expenses approved by the Commission and incurred by the Coordinating Committee prior to the receipt of the grant may be reimbursed from grant funds, subject to the limitations of Commission regulations. Payments may be made after the grant has expired if the expenses were incurred within the authorized period before the expiration date of the grant. All grants will expire on or before November 30, 1977.

§ 1902.12 Recordkeeping requirements.

(a) Complete financial records of grant funds including legible, itemized receipts to support all payments must be maintained by the fiscal officer or agent of the Coordinating Committee. Receipts for all expenditures made by the Coordinating Committee shall be maintained on file and certification of the existence of these receipts shall be submitted with the reports required in § 1902.13(a). Actual receipts shall be submitted with the final report required in § 1902.13(b).

(b) Records and receipts maintained under paragraph (a) of this section shall be available for public inspection at reasonable times and places.

(c) Records and receipts maintained under paragraph (a) of this section shall be available for government audit at any time. Consent to such audit must be indicated at the time the Coordinating Committee submits its budget proposal for Commission approval.

§ 1902.13 Financial reporting requirements.

(a) Complete reports of all expenditures made from grant funds shall be submitted by the Coordinating Committee when requesting advances on the grant and quarterly on February 28, May 31, and August 31, 1977.

(b) A final summary and report of expenditures from grant funds shall be made to the Commission on November 30, 1977.

(c) If any report required in paragraphs (a) or (b) cannot be submitted when due, the Coordinating Committee shall seek approval from the Commission, prior to the due date of the report, of a specific later date for submission of the report.

§ 1902.14 Unexpended funds.

Any grant funds advanced to a Coordinating Committee which remain unobligated at the time its final report is due shall be returned to the Commission.

§ 1902.15 Overruns.

The Commission shall not be liable for any costs incurred by the Coordinating Committee and will not advance funds beyond the total amount of the grant.

§ 1902.16 Disallowance of expenditures.

Any expenditures made by the Coordinating Committee from funds granted by the Commission which do not comply with Commission regulations may be disallowed by the Commission. The Coordinating Committee, and not the Commission, shall be solely responsible for the provision of funds to cover any disallowed expenditures.

PART 1903—STATE MEETINGS, COORDINATING COMMITTEE

Sec.
1903.1 Designation of Coordinating Committee.
1903.2 Responsibility for agenda for State meeting.
1903.3 Submission of agenda and reports to Commission.
1903.4 Employees of Coordinating Committee.
1903.5 Financial responsibilities of Coordinating Committee.
1903.6 Contributions from sources other than the Commission.
1903.7 Conduct of meetings.

AUTHORITY: E.O. 11832, 3 CFR 106, 40 FR 2415, January 13, 1975, Pub. L. 94-167, 89 Stat. 1003, December 23, 1975.

SOURCE: 42 FR 16413, Mar. 28, 1977, unless otherwise noted.

§ 1903.1 Designation of Coordinating Committee.

(a) The Commission shall designate persons to serve as members of the Coordinating Committee in each State, in such number as the Commission deems necessary, and with full recognition of the statutory requirements that the Coordinating Committee will effectively organize and conduct the State Meeting and that the State Meeting will select representatives to the conference in accordance with Sections 3 and 6 of Pub. L. 94-167.

(b) Section 3(a) of Pub. L. 94-167 requires that the Conference be composed of:

(1) Representatives of local, State, regional and national institutions, agencies, organizations, unions, associations, publications and other groups which work to advance the rights of women; and

(2) Members of the general public, with special emphasis on the representation of low-income women, members of diverse racial, ethnic, and religious groups and women of all ages.

(c) Section 3(b) of Pub. L. 94-167 sets forth the goals of the Conference to:

(1) Recognize the contributions of women to the development of our country;

(2) Assess the progress that has been made to date by both the private and public sectors in promoting equality between men and women in all aspects of life in the United States;

(3) Assess the role of women in economic, social, cultural, and political development;

(4) Assess the participation of women in efforts aimed at the development of friendly relations and cooperation among nations and to the strengthening of world peace;

(5) Identify the barriers that prevent women from participating fully and equally in national life, and develop recommendations for means by which such barriers can be removed;

(6) Establish a timetable for the achievement of the objectives set forth in such recommendations;

(7) Establish a committee of the Conference which will take steps to provide for the convening of a second National Women's Conference. The second Conference will assess the progress made in achieving the objectives set forth in paragraphs (c)(5) and (6) of this section, and will evaluate the steps taken to improve the status of American women.

The Commission will therefore designate members of the Coordinating Committee who in the judgment of the Commission will be able to organize and conduct the State Meetings to achieve these goals.

(d) The Coordinating Committee in each State shall include as ex officio members all members of the Commission who are residents of the State.

§ 1903.2 Responsibility for agenda for State meeting.

(a) The Coordinating Committee shall organize and conduct the State Meeting to achieve the purposes set forth in section 3(b)(1)-(6) of Pub. L. 94-167 as set forth in § 1903.1(c)(1)-(6).

(b) Subject to the provisions of subsection (d) of this section, the State Meeting shall consider, and report on, as many of the recommendations of the Commission as is feasible. The recommendations of the Commission relate to the following topics which may be used as workshop topics:

(1) Legal Status of Homemakers.
(2) Women and Employment.
(3) Women and Education.
(4) Equal Rights Amendment.
(5) Women and the Media.
(6) Child Care.
(7) Teenage Pregnancy.
(8) Women in Elective and Appointive Office.
(9) Women and Credit.
(10) Physical and Mental Health of Women.
(11) Rape.
(12) Female Offenders.
(13) Women in the Arts and Humanities.
(14) Racial and Ethnic Minority Women.
(15) Older Women.
(16) Strategies for Change in the Status of Women.
(17) International Interdependence.

(c) In addition to the topics in paragraph (b) of this section, the State Meeting may consider additional topics relevant to identifying the barriers that prevent women from participating fully and equally in all aspects of national life. However, the recommendations and report of the State Meeting must focus on the particular concerns of women within such additional topics.

(d) Neither the Coordinating Committee nor the State Meeting shall include as a topic selected for the Meeting subjects dealing primarily with religion, or religious institutions, organizations or activities, or women's roles in any of them.

§ 1903.3 Submission of agenda and reports to Commission.

(a) The Coordinating Committee shall submit its proposed program agenda for the approval of the Commission before any distribution or publication of the agenda.

(b) Within 30 days after the completion of the State Meetings, the Coordinating Committee shall submit to the Commission a complete report of all activities at the State Meeting, including detailed minutes of all plenary or general sessions, and a complete listing of all representatives selected and certified to participate in the Conference in accordance with Commission instructions.

§ 1903.4 Employees of Coordinating Committee.

(a) Members of the Coordinating Committee, their employees and volunteers who provide services to the Coordinating Committee will not be deemed employees of the Federal Government for purposes of laws relating to retirement, insurance, health benefits, veteran's preference, or any other law under which benefits are made available only to compensated employees of the Federal Government, in accordance with the provisions of Title V of the United States Code, except as otherwise provided in paragraphs (b) and (c) of this section.

(b) Members of the Coordinating Committee, their employees, and volunteers who provide services to such Committee are eligible to receive workmen's compensation benefits for work-related injuries pursuant to 81 of Title V of the United States Code, provided such injuries are incurred in the conduct of business for the Coordinating Committee in fulfilling its functions pursuant to Pub. L. 94-167.

(c) Members of the Coordinating Committee, their employees and volunteers who provide services to such

Committee are covered by the Federal Tort Claims Act, 28 U.S.C. 1346, 2671 et seq., for tortious injury caused by them to third parties, provided that such injury occurs while the members, employees, or volunteers are performing official business on behalf of the Coordinating Committee in fulfilling its functions pursuant to Pub. L. 94-167.

§ 1903.5 Financial responsibilities of Coordinating Committee.

The Coordinating Committee shall undertake all financial responsibilities in relation to the State Meeting which are required by Commission regulations. Such responsibilities include financial assistance to persons who are unable to pay their own expenses for the purpose of participating in the meetings of the Coordinating Committee, the State Meeting, or the Conference.

§ 1903.6 Contributions from sources other than the Commission.

The Coordinating Committee may, subject to Commission regulations, accept, use, and dispose of, in connection with the organization and conduct of the State Meeting, any contributions of money, services, facilities or property made from private persons or firms or by local, State, or Federal Government agencies. The Coordinating Committee shall keep records for informational purposes of the general nature of the sources, kinds, and amounts of such contributions and the nature of expenditures made from contributed funds. A summary report of such records shall be submitted by the Coordinating Committee to the Commission on November 30, 1977, in accordance with Commission instructions.

§ 1903.7 Conduct of meetings.

The Coordinating Committee shall conduct its own meetings and the State Meeting according to rules of procedure issued by the Commission, including the rules for the election and certification of representatives from the State Meeting to the Conference.

PART 1904—STATE MEETINGS, RULES OF PROCEDURE

Subpart A—Coordinating Committee Organization

Sec.

1904.1 Initial exploratory meeting.
1904.2 Organizing meeting.
1904.3 Coordinating Committee officers.
1904.4 Coordinating Committee duties.

Subpart B—State Meeting Organization

1904.5 Call to the State Meeting.
1904.6 State Meeting Program.
1904.7 Voting body.
1904.8 Registration.
1904.9 Seating.
1904.10 Discussion.
1904.11 Motions.
1904.12 Voting requirement.

Subpart C—Selection of State Representatives to the National Women's Conference

1904.13 Entitlement.
1904.14 Composition.
1904.15 Advance notices.
1904.16 Nominating committee.
1904.17 Election.

Subpart D—Conduct of the State Meeting

1904.18 Discussion groups.
1904.19 Doorkeepers and Timekeepers.
1904.20 Credentials Committee.
1904.21 Minutes.
1904.22 Parliamentary authority.
1904.23 Exceptions to Rules.

AUTHORITY: E.O. 11832, 3 CFR 106, 40 FR 2415, January 18, 1975, Pub. L. 94-167, 89 Stat. 1003, December 23, 1975.

SOURCE: 42 FR 11012, Feb. 25, 1977, unless otherwise noted.

Subpart A—Coordinating Committee Organization

§ 1904.1 Initial exploratory meeting.

(a) The Temporary convenor of the Coordinating Committee, appointed by the Commission, shall call and preside over an initial exploratory meeting of the Committee, upon 10 days advance written notice to all members. The exploratory meeting shall:

(1) Indoctrinate all members as to the law and the regulations;

(2) Assess the talents of committee members with a view to designating

them for services as officers and committee assignments;

(3) Give preliminary consideration to structuring the work of the Committee;

(4) Issue a call for an organizing meeting and fix the time and place for such meeting; and

(5) Appoint a Nominating Committee of not less than three members charged with presenting a slate of nominees for permanent offices for action by the Organizing Meeting.

(b) However, if, in the combined judgment of the Temporary Convenor and the Regional Coordinator, time limitations and/or travel distances render it impossible or impracticable to hold the initial meeting provided for in paragraph (a) of this section, the Temporary Convenor, with approval of the Regional Coordinator, shall appoint a Nominating Committee, shall supply all its members with full data respecting members of the Coordinating Committee as a guide in making nominations, and shall call a meeting of the Nominating Committee preceding the opening of the Organizing Meeting. Indoctrination, assessment of talents, and structuring must then be deferred to the Organizing Meeting.

§ 1904.2 Organizing meeting.

The Organizing Meeting of the Committee shall be held as expeditiously as possible, and upon at least 10 days written notice to all members as to the time and place as well as the Nominating Committee's procedure. The following actions, among others, shall be taken at such meeting:

(a) Decide upon preliminary structure and assignment of functions leading up to the State Meeting;

(b) Receive the report of the Nominating Committee, call for nominations from the floor, and elect Committee officers by ballot;

(c) Authorize the opening of a bank account and notify the Fiscal Officer of her responsibilities for administering funds in accordance with Commission requirements;

(d) Consider the place for holding the State Meeting to be held prior to July 10, 1977, unless prior approval of the Commission is secured;

(e) Appoint such Committees as are immediately needed, for example, arrangements, finances, program, et cetera;

(f) Work out a calendar of action for future meetings;

(g) Issue a call for the succeeding meeting.

§ 1904.3 Coordinating Committee officers.

The Committee shall elect the following officers from among its members: A Chair and one or more Vice Chairs, a Fiscal Officer, a Recording Secretary and a Correspondence Secretary. These elected officers shall constitute the Executive Committee. The Executive Committee is authorized to act on routine and emergency matters between meetings of the Coordinating Committee, subject to ratification by the Coordinating Committee.

§ 1904.4 Coordinating Committee duties.

The Coordinating Committee shall have overall responsibility for the planning and conduct of the State Meeting in accordance with the purposes of the Act, including the following enumerated duties, among others:

(a) Fixing the time and place for the Meeting, issuing a call thereto, and providing notice of these in accordance with § 1904.5;

(b) Electing a Presiding Officer for the State Meeting and appointing all Chairs or officials deemed necessary for the proper and efficient functioning and orderly conduct of the Meeting, including, for example, Credentials and Registration Committee, Nominating Committee, Elections Committee, a Recorder, a Parliamentarian, Timekeepers, Floor Tellers, Election Committee Tellers, Doorkeepers, Sergeant-at-Arms, et cetera;

(c) Submitting to the National Commission promptly and in accordance with Commission instructions, a listing of elected State Representatives to the National Conference;

(d) Rendering a final Report to the IWY Commission which shall set forth all the recommendations or significant actions taken at the State Meeting;

(e) Budget and finance accountability to the Commission.

Subpart B—State Meeting Organization

§ 1904.5 Call to the State meeting.

Notices of the time, place and purposes of the State Meeting shall be mailed to State and local organizations which work to advance the rights of women, and publicity shall be given to the Meeting through all media (including newspapers, radio and television) with special efforts to reach all sections of the public.

§ 1904.6 State Meeting Program.

The program content for the State Meeting shall conform to the requirements of Pub. L. 94-167 and § 1903.2 of this chapter.

§ 1904.7 Voting body.

(a) The voting body of the Meeting shall consist of: (1) Members of the Coordinating Committee; (2) bona fide residents aged 16 or over of the State who have been registered upon acceptable proof of residence, and (3) persons, aged 16 or over, who are enrolled in educational institutions in the State and are duly registered at the Meeting.

(b) Persons who desire merely to audit the proceedings, without vote, may register as observers upon compliance with registration requirements.

§ 1904.8 Registration.

(a) All persons shall be required to register in accordance with prescribed identification and fee requirements. A registration badge shall be issued to each registrant and will be necessary for admission to the Meeting. Badges shall identify each person as a voter or as an observer.

(b) A non-transferable voting card shall be issued each registrant who is qualified to vote.

§ 1904.9 Seating.

Designated seating spaces will be reserved for members of the Coordinating Committee, Committee Chairs, special guests, the Voting Body, and for nonvoting registered observers.

§ 1904.10 Discussion.

(a) In order to address the Meeting, a registrant must address the chair, await recognition, give her name and identification, and state whether she is speaking in the affirmative or negative. In the discretion of the Presiding Officer, an observer may participate in the discussion by the same procedure.

(b) Except by unanimous consent of the Meeting, no person may speak more than two minutes on a motion, nor speak a second time until all others have had an opportunity to do so, nor speak more than twice to a given question.

§ 1904.11 Motions.

(a) Only persons duly registered as members of the voting body may make motions or vote. All motions, except on procedural matters, shall be written and signed by the proponent. The Presiding Officer may require such written motion before action is taken.

(b) The Presiding Officer shall require a showing of voting cards upon the taking of a vote.

(c) A motion to table or postpone indefinitely shall require a two-thirds vote.

§ 1904.12 Voting requirement.

(a) The State Meeting shall indicate its action on substantive questions by consensus or by majority vote.

(b) There shall be no proxy voting.

Subpart C—Selection of State Representatives to the National Women's Conference

§ 1904.13 Entitlement.

Each State shall be entitled to a minimum of 10 representatives plus twice the number of Congressional Districts in the State. It may elect up to five persons available as alternate representatives to serve in the event of the absence or incapacity of a prior ranking representative. The alternate must either be registered as a delegate, or must have in her possession the badge of the temporarily absent representative she is replacing, in order to cast a vote at the National Women's Conference.

§ 1904.14 Composition.

The State Meeting shall select representatives to the National Conference on the principle of balanced representation as set forth in Pub. L. 94-167, Sec. 3(a) (1) and (2), reading as follows:

> SEC. 3(a). The Conference shall be composed of—(1) representatives of local, State, regional, and national institutions, agencies, organizations, unions, associations, publications, and other groups which work to advance the rights of women; and (2) members of the general public, with special emphasis on the representation of low-income women, members of diverse racial, ethnic, and religious groups, and women of all ages.

§ 1904.15 Advance notices.

The Coordinating Committee shall include in its call to the Meeting the information as to the number of State Representatives to the National Conference allotted to the State, and the balanced representation requirements of the law.

§ 1904.16 Nominating committee.

(a) A State Nominating Committee shall be elected by the Coordinating Committee consisting of five persons, at least three of whom shall be members of the Coordinating Committee. Two additional persons shall be appointed as alternates to serve in the event of the absence or incapacity of any of the five members. Not less than four persons, three of whom shall have been named as members, shall constitute a quorum.

(b) The Nominating Committee shall hold its initial meeting upon call of the Chair of the Coordinating Committee, at the earliest possible date.

(c) The Nominating Committee shall prepare and present a balanced list of nominees for the State's Representatives with name, address, statement of willingness to serve and other data specified by the Commission.

(d) The list of nominees shall be presented to the Coordinating Committee not less than 10 days prior to the State Meeting, and shall be made available immediately to any inquiring person or group. The Nominating Committee shall also present its report during the first plenary session of the State Meeting, which shall be followed by the call for nominations from the floor.

(e) Nominations from the floor shall require prior consent of the nominee and submission of the data required from all nominees.

(f) Immediately following the close of nominations, the Chair of the Nominating Committee shall post in the Meeting hall and at the delegate registration desk, the names of all nominees, together with a brief statement of their background and affiliations according to Commission instructions.

(g) The Nominating Committee shall prepare ballots listing the names of all Nominating Committee candidates, with appropriate spaces for write-in votes or for names of floor nominees.

§ 1904.17 Election.

(a) The Coordinating Committee shall appoint an Elections Committee which shall have charge of elections, with authority to decide any challenge to the validity of a ballot or compliance with the rules. Every ballot shall be counted where the intent of the voter is clear.

(b) The Coordinating Committee shall fix the hours for nomination and for the elections, including the hour for closing the polls. This information shall be included in the printed program.

(c) Election shall be by ballot. No ballots shall be distributed prior to the closing of nominations. Ballots will be issued only to those wearing voter registration badges, and each voter's badge will be marked upon the casting of her ballot.

(d) A plurality vote shall elect. The allowable number of persons receiving the highest number of votes shall be the elected representatives. In the event of a tie vote for the finally allotted post, there shall be a further ballot to resolve this selection, the loser to be designated as first alternate. A total of five alternates shall be allowed, ranked according to votes received, who shall be named to serve as representative in the event of the absence or incapacity of an elected representative.

(e) The Elections Committee shall supervise and direct the work of the tellers in the counting of ballots. Several sets of tellers shall be named, each set to consist of four persons, two to look over each ballot together while one reads it aloud, and two to record the vote on the tally sheet. The Elections Committee Chair shall combine the results from the tellers into a final election report which shall be announced to the Meeting. Tellers shall maintain strict secrecy as to the outcome of the voting until such time as the final report is given to the Meeting.

(f) The Elections Committee Chair shall be responsible for the safety and custody of the ballots along with tally sheets, and turn them over to the Presiding Officer to be held for at least 24 hours.

(g) Each State Representative and alternate elected to attend the National Conference shall be issued a certificate attesting thereto which shall be signed by the Chair of the Coordinating Committee and the Recording Secretary of the State Meeting.

Subpart D—Conduct of the State Meeting

§ 1904.18 Discussion groups.

(a) Workshops or other scheduled discussion groups shall have a Chair and a Recorder and shall be conducted under the procedures set out in §§ 1904.10-1904.12.

(b) Recommendations for action by the Meeting may be made by the scheduled work groups or by the Coordinating Committee. Proposals for action from any other source may be entertained only after a majority vote to consider.

§ 1904.19 Doorkeepers and Timekeepers.

Doorkeepers shall require the showing of registration badges for admission to the Meeting. The timekeepers shall indicate to each speaker the expiration of the time allowed.

§ 1904.20 Credentials Committee.

The Credentials Committee shall be responsible for requiring proper information for registration, and shall have authority to decide any registration question. It shall report the registration to the State Meeting as scheduled in the printed program or as requested by the Presiding Officer.

§ 1904.21 Minutes.

(a) Accurate and detailed minutes shall be kept on the plenary sessions, which shall be submitted to the Commission.

(b) The Recording Secretary, the Chair of the Coordinating Committee, and the Presiding Officer shall be authorized to give final approval to the minutes. The Chair of the Coordinating Committee shall be responsible for furnishing a copy of the minutes to the Presiding Officer of the Commission within 30 days after the close of the State Meeting.

§ 1904.22 Parliamentary authority.

In matters not covered by these rules, Roberts Rules of Order, Newly Revised, shall be the parliamentary authority.

§ 1904.23 Exceptions to Rules.

(a) The Coordinating Committee shall have the authority to make exceptions to, or provide alternative rules for, those rules set forth in §§ 1904.1 through 1904.3 and 1904.18(a) except that all workshops or other scheduled discussion groups shall have a Chair and a Recorder. Exceptions or alternatives to the rules may be made for the meetings of the Coordinating Committee, or the State Meeting or any part thereof where applicable. Unless the Coordinating Committee votes on the record to provide such exception or alternative, §§ 1904.1-1904.3, 1904.18(a) shall apply as set forth above.

(b) The Coordinating Committee shall have no authority to make exceptions to or provide alternatives for any rules other than as set forth in paragraph (a) of this section.

PART 1905—NATIONAL WOMEN'S CONFERENCE, RULES OF ORDER

Subpart A—Call to Conference

Sec.
1905.1 Call to conference.

Subpart B—Voting Delegates and Voting

1905.2 Voting body.
1905.3 No proxy voting.
1905.4 Method of voting.
1905.5 Identification badges.

Subpart C—Registration for Plenary Session

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1905.7 Order of business.
1905.8 Designated seating.
1905.9 Quorum.
1905.10 Discussion and debate.
1905.11 Making motions.
1905.12 Credentials committee.
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1905.14 Floor tellers.
1905.15 New business.
1905.16 Minutes.
1905.17 Interpretation of rules.
1905.18 Parliamentary authority.
1905.19 Conference officials.
1905.20 Committee of the conference.

AUTHORITY: E.O. 11832, 40 FR 2415, January 18, 1975, Pub. L. 94-167, 89 Stat. 1003, December 23, 1975.

SOURCE: 42 FR 57128, Nov. 1, 1977, unless otherwise noted.

Subpart A—Call to Conference

§ 1905.1 Call to conference.

The Commission shall determine the time, place and the agenda of the Conference and shall issue official notice thereof to the Chair and to the Recording Secretary of each Coordinating Committee, to all delegates, and to the general public.

Subpart B—Voting Delegates and Voting

§ 1905.2 Voting body.

The voting body of the Conference shall consist of the following voting delegates:

(a) State delegates, certified as having been duly selected in accordance with applicable regulations;

(b) All current and past members of the Commission'

(c) Additional delegates-at-large designated by the Commission deemed necessary and appropriate to fulfill the requirements of Section 3(a) of Pub. L. 94-167;

(d) Alternate State delegates who have been properly certified in one of the following two ways:

(1) If the Commission receives proper notification by November 1, 1977, that a State Delegate is unable to attend, the ranking alternate selected at the State Meeting will be permanently certified by the Commission as a State delegate; or

(2) The Chair of the State delegation shall notify the Credentials Committee if she has been informed by a delegate in her State's delegation that such delegate is unable to attend or can no longer continue to participate in one or more sessions. Upon notification by chair of the State delegation, the Credentials Committee will then certify the appropriate ranking alternate delegate present at the Conference as a delegate for her State for the appropriate session or sessions.

(3) In implementing the aforementioned rules, the following principles shall be controlling:

(i) An alternate has no right to participate as a voting delegate unless properly certified pursuant to paragraph (d) (1) or (2) of this section.

(ii) If a delegate has notified the chair of her State's delegation that she is unable to participate in any session and if she has been replaced by an alternate for that session according to the procedure in this section, she may not return and be recertified as a voting delegate during any such session.

(iii) There shall be no alternate delegates for current and past members of the Commission and delegates-at-large.

§ 1905.3 No proxy voting.

There shall be no proxy voting. No individual shall have more than one vote.

§ 1905.4 Method of voting.

The regular method of voting shall be by standing vote, except that individuals with physical limitations may vote by raising their hands. A majority vote of those present and voting shall be required in order to overrule any ruling of the chair. There will be no secret ballots or roll call votes.

§ 1905.5 Identification badges.

Voting delegates and alternates shall have photo identification badges.

Subpart C—Registration for Plenary Sessions

§ 1905.6 Registration.

All persons who attend the plenary sessions (including press) must comply with registration requirements, including registering with name, address, identification, and payment of any required fee. Upon compliance with registration requirements each registrant shall be issued an identification badge as voter, special guest, observer, press or staff. Badges shall not be transferable and they must be visible at all meetings. Badges shall not be altered in any fashion.

Subpart D—Conduct of Conference Sessions

§ 1905.7 Order of business.

The Commission shall establish the order of business for the Conference when it issues the Call to the Conference according to § 1905.1. New business may be submitted and adopted in accordance with § 1905.15.

§ 1905.8 Designated seating.

Separate seating spaces shall be provided and clearly designated as follows:

(a) Current and past Commission members;

(b) State delegates, seated by State delegation;

(c) Delegates-at-Large;

(d) Alternate State delegates;

(e) Special guests;

(f) Official observers;

(g) Operational committees and Commission and Conference staff;

(h) Duly registered press; and

(i) Duly registered observers to the capacity of the meeting room.

Only persons wearing an appropriate badge shall be admitted to the plenary sessions by the Credentials monitors, and only to designated areas and at — esignated times in accordance with procedures established by the Commission and the Credentials Committee. Only voting delegates, authorized media personnel and authorized Commission and Conference staff shall be admitted to the floor for Conference sessions.

§ 1905.9 Quorum.

One-third of the duly registered voting delegates shall constitute a quorum for the plenary voting sessions.

§ 1905.10 Discussion and debate.

(a) In order to address the Conference, a voting delegate must address the chair, await recognition, give her name and identification and state whether she is speaking in the affirmative or the negative.

(b) Discussion on a motion or agenda topic shall be limited to two minutes for each speaker.

(c) No one may speak a second time on an issue until all others who wish to speak have had an opportunity to do so.

(d) Debate may be limited or terminated by a majority vote of those voting delegates present and voting.

(e) The Chair shall have the authority to call an executive session when she deems it necessary to insure the orderly conduct of the Conference. In the event the Chair exercises this authority, the hall shall be cleared of all observers.

§ 1905.11 Making motions.

(a) Only properly certified voting delegates may speak to issues, making motions or vote. All motions, except on procedural matters, shall be written and signed by the person who makes the motion. The chair may require such written motion before action is taken.

(b) A majority vote of those voting delegates present and voting shall be required to table, or to postpone indefinitely, or to object to consideration.

§ 1905.12 Credentials committee.

A Credentials Committee shall be appointed by the Rules Committee. The Credentials Committee shall have authority and responsibility to resolve any questions of registration, voting rights, or admission to the Conference, and to report registrations to the Conference upon request of the Chair. List of State delegates and of delegates-at-large shall be provided to the Chair of the Credentials Commitee prior to the opening of Conference registration. Duplications of such lists shall be prepared to facilitate the registration.

(a) No registrant will be permitted to obstruct the view or hearing of any other registrant by any device. Only persons authorized by the Commission shall be permitted to bring any electronic or sonic devices into the Conference. Any person violating these rules may be denied all Conference privileges and removed from the Conference.

(b) Any registrant may be requested at any time by the Credentials Committee to provide additional identification. The Credentials Committee may deny any or all Conference privileges to any registrant who lacks appropriate identification or abuses any Conference privilege or obstructs the orderly conduct of the Conferences.

(c) The Credentials Committee shall appoint sergeants-at-arms and credentials monitors as necessary to assist in the enforcement of the rules of the Conference.

§ 1905.13 Timekeepers.

Timekeepers shall be appointed by the Rules Committee to serve at all sessions. Their duty shall be to indicate to each speaker an appropriate warning before expiration of the time allowed.

§ 1905.14 Floor tellers.

Floor tellers shall be appointed by the Rules Committee to count, tabulate and report standing count votes. The floor tellers shall be assigned to definite sections of the conference floor. A record of the vote shall be entered in the minutes. During a vote count only floor tellers will be permitted to move about. All other persons except voting delegates shall leave the voting area.

§ 1905.15 New business.

Subject matter not embraced within the established order of business, in the judgment of the Chair, may be brought up under the heading of new business at the final session. Any such new business shall be submitted to the Recording Secretary in writing prior to the close of the session before the last plenary session in order that it may be read to the Conference body at the start of the last plenary session. A majority vote of those voting delegates present shall be required to consider such new business.

§ 1905.16 Minutes.

The recording secretary, who shall be appointed by the Rules Committee, shall be responsible for the preparation of the official minutes for all plenary sessions. Tape recording shall be provided for all plenary session discussions to aid in the preparation of accurate minutes by the designated Recorder or Recorders. Minutes shall be approved by the Chair of the Session and by the Presiding Officer of the Commission or her designate.

§ 1905.17 Interpretation of rules.

Any question regarding the interpretation of these rules shall be resolved by the Rules Committee.

§ 1905.18 Parliamentary authority.

(a) The Rules Committee shall appoint the parliamentarians who shall be advisors to the Chair. The rules in Roberts' Rules of Order Newly Revised, shall govern the plenary sessions of the Conference in all cases when not inconsistent with these rules.

(b) The format, agenda, order of business and seating arrangements shall be determined in all cases by the Commission. All discussion groups or other meetings of the Conference shall be governed by Roberts' Rules of Order Newly Revised whenever open debate is scheduled.

§ 1905.19 Conference officials.

At each plenary session there shall be in attendance a Chair, Vice-Chair, Federal officer, appointed pursuant to the requirements of the Federal Advisory Committee Act, the Chair of the Rules Committee or her designee, the Chair of the Credentials Committee or her designee, an official parliamentarian, timekeepers, tellers, a recording secretary and credentials monitors. The Chair and Vice-Chair for each plenary session shall be appointed by the Commission.

§ 1905.20 Committee of the conference.

Pursuant to Section 3(b)(7) of Pub. L. 94-167 the Conference shall establish a Committee of the Conference which will take steps to provide for the convening of a second National Women's Conference.

CHAPTER XXI—COMMISSION OF FINE ARTS

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PART 2101—FUNCTIONS AND ORGANIZATION

Subpart A—Functions and Responsibilities of the Commission

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2101.1 Statutory and Executive Order authority.
2101.2 Relationships of Commission's functions to responsibilities of other government units.

Subpart B—General Organization

2101.10 The Commission.
2101.11 Secretary to the Commission.
2101.12 Georgetown Board of Architectural Consultant.

AUTHORITY: 40 U.S.C. 104, 36 Stat. 371; 40 U.S.C. 106, 74 Stat. 128; E.O. 1259, (Oct. 25, 1910); E.O. 1862, (Nov. 28, 1913) E.O. 3524, (July 28, 1921); 40 U.S.C. 121, 46 Stat. 366; 40 U.S.C. 121, 53 Stat. 1144; D.C. Code 5-801, 64 Stat. 903; 36 U.S.C. 124, 60 Stat. 317; 40 U.S.C. 72, 66 Stat. 781; 10 U.S.C. 4594, 71 Stat. 589.

SOURCE: 44 FR 67050, Nov. 21, 1979, unless otherwise noted.

Subpart A—Functions and Responsibilities of the Commission

§ 2101.1 Statutory and Executive Order Authority.

The Commission of Fine Arts (referred to as the "Commission") functions pursuant to statutes of the United States and Executive Orders of Presidents, as follows:

(a) *Public buildings, other structures, and parklands.* (1) For public buildings to be erected in the District of Columbia by the federal government and for other structures to be so erected which are important to the appearance of the city, the Commission comments and advises on the plans and on the merits of the designs before final approval or action;

(2) For statutes, fountains and monuments to be erected in the District of Columbia under authority of the federal government, the Commission advises upon their location in public squares, streets, and parks, upon the selection of models and upon the merits of the designs;

(3) For monuments to be erected at any location pursuant to the American Battle Monuments Act, the Commission approves the designs and materials before they are accepted by the Monuments Commission;

(4) For parks within the District of Columbia, when plans of importance are under consideration, the Commission advises upon the merits of the designs; and

(5) For the selection by the National Capital Planning Commission of lands suitable for development of the National Capital park, parkway, and playground system in the District of Columbia, Maryland, and Virginia, the Commission provides advice.

(b) *Private buildings bordering certain public areas in Washington, D.C.* For buildings to be erected or altered [1] in locations which border the Capitol, the White House, the intermediate portion of Pennsylvania Avenue, the Mall Park System, Lafayette Park, the Zoological Park, Rock Creek Park or Parkway, or Potomac Park or Parkway, or are otherwise within areas defined by the official plats prepared pursuant to Sec. 2 of the Shipstead-Luce Act, the Commission reviews the plans as they relate to height and appearance and to color and texture of the exteriors, and makes recommendations to the government of the District of Columbia, including ones for changes as in the judgement of the Commission are necessary to prevent reasonably avoidable impairment of the public values represented by the areas along which the buildings border. (The Shipstead-Luce Act, 46 Stat. 366 as amended (40 U.S.C. 121; D.C. Code 5-410).)

(c) *Georgetown buildings.* For buildings to be constructed, altered, reconstructed, or razed within the area of the District of Columbia known as "Old Georgetown." The Commission reviews and reports to the District of Columbia Government on proposed exterior architectural features, height, appearance, color, and texture of exterior materials as would be seen from public space; and the Commission makes recommendations to such government as to the effect of the plans on the preservation and protection of places and areas that have historic interest or that manifest exemplary features and types of architecture, including recommendations for any changes in plans necessary in the judgement of the Commission to preserve the historic value of Old Georgetown, and takes any such actions as in the judgement of the Commission are right or proper in the circumstances. (Old Georgetown Act, 64 Stat. 903 (D.C. Code 5-801)

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[1] Alteration does not include razing of a building (*Commissioner of the District of Columbia* v. *Bennenson*, D.C. Ct. of App., 1974, 329 A. 2d 437). Partial demolition, however, is viewed as an alteration (The Committee to Preserve Rhodes Tavern and the National Processional Route v. Oliver T. Carr Company, et al., U.S. Ct. of App. for D.C. Cir., 1979, 79-1457, Dept. Justice Brief for Fed. Appellee).

(d) *United States medals, insignia, and coins.* On medals, insignia, and coins to be produced by an executive department of the United States, the Commission advises as to the merits of their designs; and if requested to do so, the Commission advises the Heraldic Branch, Quartermaster Corps, Department of the Army, on merits of designs it proposes for medals, insignia, seals, and the like. (E.O. 3254 of July 28, 1921 and 71 Stat. 589 (10 U.S.C. 4954))

(e) *Questions of art with which the Federal Government is concerned.* When required to do so by the President or by either House of Congress, the Commission advises generally on questions of art, and whenever questions of such nature are submitted to it by an officer or department of the federal government the Commission advises and comments. (36 Stat. 371 (40 U.S.C. 104) and E.O. 1862 of November 28, 1913).

§ 2101.2 Relationships of Commission's functions to responsibilities of other government units.

(a) *Projects involving the Capitol building and the Library of Congress.* Plans concerning the Capitol building and the buildings of the Library of Congress are outside the purview of the Commission except as to questions on which the Congress requires the Commission to advise.

(b) *Other United States Government projects.* Officers and departments of the United States Government responsible for finally approving or acting upon proposed projects within the purview of the Commission's functions as described in § 2101.1 (a) and (d) are required first to submit plans or designs for such projects to the Commission and obtain its advice and comments.

(c) *Projects within the jurisdiction of the District of Columbia Government.* The District of Columbia seeks Commission advice on exterior alteration or new construction of public buildings or major public works within its boundaries. The District of Columbia Government also shall seek Commission advice on certain private construction requiring building or demolition permits from the D.C. Permit Branch (D.C. Law 5-422). These include certain actions by the District of Columbia Government pursuant to either D.C. Law 5-422 or D.C. Law 2-144 within areas subject to the Shipstead-Luce or Old Georgetown Acts (§ 2101.1 (b) and (c)) prior to the issuance of a permit.[2] Lot subdivision, alteration of buildings, demolition, or new construction at individually designated landmarks or within historic districts are further subject to the permit requirements of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144).[3]

Subpart B—General Organization

AUTHORITY: 36 Stat. 371 as amended (40 U.S.C. 104 and 106); sec. 3, 64 Stat. 903 (D.C. Code 5-801).

§ 2101.10 The Commission.

The Commission is composed of seven members, each of whom is appointed by the President and serves for a period of four years or until his or her successor is appointed and qualifies. The Chairman is elected by the members. The Commission is assisted by a staff as authorized by the Commission.

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[2] Provisions of the Shipstead-Luce Act (§ 2101.1(b)) do not include full demolition, though partial demolition is viewed as an alteration.

[3] The Historic Sites Subdivision Amendment of 1976 (D.C. Law 1-80) purported to give the Commission advisory authority over subdivision permits within the areas covered by the Shipstead-Luce Act and the Old Georgetown Act, but the law was repealed by the 1978 Act (D.C. Law 2-144).

§ 2101.11 Secretary to the Commission.

Subject to the direction of the Chairman, the Secretary to the Commission is responsible for providing secretarial and record-keeping services by the staff to support the functions of the Commission; for preparing the agenda of Commission meetings; for organizing the presentation before the Commission of plans, designs, or questions upon which it is to advise, comment, or respond; for interpreting the Commission's conclusions, advice, or recommendations on each matter submitted to it; and for maintaining custody of the Commission's records. The Assistant Secretary of the Commission shall carry out duties delegated to him by the Secretary and shall act in place of the Secretary during his absence or disability.

§ 2101.12 Georgetown Board of Architectural Consultants.

To assist the Commission in carrying out the purposes of the Old Georgetown Act (§ 2101.1(c)), a committee of three architects appointed for a term of three years by the Commission serves as the Board of Architectural Consultants without expense to the United States. This committee advises the Commission regarding designs and plans referred to it.

PART 2102—MEETINGS AND PROCEDURES OF THE COMMISSION

Subpart A—Commission Meetings

Sec.

2102.1 Times and places of meetings.
2102.2 Actions outside of meetings.
2102.3 Public notice of meetings.
2102.4 Public attendance and participation.
2102.5 Records and minutes; public inspection.

Subpart B—Procedures on Submissions of Plans or Designs

2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings or other structures.

Sec.

2102.11 Scope and content of submissions for proposed medals, insignia, coins, seals, and the like.
2102.12 Responses of Commission to submissions.

AUTHORITY: Sec. 10, 86 Stat. 770 as amended (5 U.S.C., App. 1, Federal Advisory Committee Act 10); OMB Circular No. A-63 (36 FR 2306, January 23, 1973) as amended.

SOURCE: 44 FR 67051, Nov. 21, 1979, unless otherwise noted.

Subpart A—Commission Meetings.

§ 2102.1 Times and places of meetings.

Regular meetings of the Commission, open to the public, are held monthly on the second Tuesday of the month, beginning at 10:00 o'clock a.m., in its offices at 708 Jackson Place, N.W., Washington, D.C. 20006, except that by action of the Commission a regular meeting in any particular month may be omitted or it may be held on another day or at a different time or place. A special meeting, open to the public, may be held in the interval between regular meetings upon call of the Chairman and five days' written notice of the time and place mailed to each member who does not in writing waive such notice. On all matters of official business, the Commission shall conduct its deliberations and reach its conclusions at such open meetings except as stated in § 2101.12 provided, however, that Commission members may receive staff briefings or may have informal background discussions among themselves and the staff outside of such meetings.

§ 2102.2 Actions outside of meetings.

Between meetings in situations of emergency, the Commission may act through a canvass by the Secretary of individual members, provided that any action so taken is brought up and ratified at the next meeting. In addition, the Commission members may convene away from the Commission's offices to make inspections at the site of a proposed project or at the location of a mock-up for the project and may then and there reach its conclusions respecting such project which shall be recorded in the minutes of the meeting held on the same day or, if none was then held, in the minutes of the next meeting.

§ 2102.3 Public notice of meetings.

Notice of each meeting of the Commission shall be made at least one week in advance by posting in the lower lobby of the Commission's offices and by submission for publication in the FEDERAL REGISTER.

§ 2102.4 Public attendance and participation.

Interested persons are permitted to attend meetings of the Commission, to file statements with the Commission at or before a meeting, and to appear before the Commission when it is in meeting, provided that an appearance will be permitted only if it is germane to the functions and policies of the Commission and to the matter or issues then before the Commission and only if the presentation or argument is made in a concise manner within reasonable time limits and it avoids duplicating information or views already before the Commission. A decision of the Chairman as to the order of appearances and as to compliance with these regulations by any person shall be final unless the Commission determines otherwise.

§ 2102.5 Records and minutes; public inspection.

A detailed record of each meeting shall be made and kept which shall contain names of persons who appeared before the Commission, information or arguments presented orally, discussions held and conclusions, reached, together with copies of all written, printed, or graphic materials presented. The Secretary shall also prepare minutes of each meeting which shall state the time and place it was held and attendance by Commission members and staff and which shall contain a complete summary of matters discussed and conclusions reached and an explanation of the extent of public participation, including names of persons who presented oral or written statements and an estimate of the number of members of the public who attended; and he shall send a copy to each member of the Commission. The accuracy of all such minutes shall be certified by the Chairman. The minutes and any completed reports, studies, agenda or other documents made available to, or prepared for or by, the Commission shall be available for public inspection and, at the requesting party's expense, for copying at the offices of the Commission.

Subpart B—Procedures on Submissions of Plans or Designs

§ 2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings, or other structures.

(a) A party proposing a project which is within the purview of the Commission's functions under § 2101.1 (a), (b), or (c) should make a submission when preliminary plans for the project are ready but before detailed plans and specifications or working drawings are prepared. In order to assure that a submission will be considered at the next scheduled meeting of the Commission, it should be delivered to the Commission's offices not later than five (5) days before the meeting; if it is a project subject to review first by the Georgetown Board, not later than three (3) days before the Georgetown Board meeting. The Commission will attempt to consider a submission which is not made in conformity with this schedule, but it reserves the right to postpone consideration until its next subsequent meeting.

(b) Each submission should state or disclose (1) the nature, location, and justification of the project, including any relevant historical information about a building or other structure to be altered or razed, (2) the identity of the owner or developer (or for public buildings, the governmental unit with authority to approve or act upon the plans) and of the architect, (3) the functions, uses, and purpose of the project, and (4) other information to the extent it is relevant, such as area studies, site plans, building and landscape schematics, renderings, models, depictions or samples of exterior materials and components, and photographs of existing conditions to be affected by the project. Alternative proposals may be included within one submission. The information submitted shall be sufficiently complete, detailed, and accurate as will enable the Commission to judge the ultimate character, siting, height, bulk, and appearance of the project, in its entirety, including the grounds within the scope of the project, its setting and environs, and its effect upon existing conditions and upon historical and prevailing architectural values.

(c) If a project consists of a first or intermediate phase of a contemplated larger program of construction, similar information about the eventual plans should accompany the submission. Even though a submission relates only to approval for razing or removal of a building or other structure, the project will be regarded as part of phased development, and the submission is subject to such requirement.

(d) If the project involves a statute, fountain or a monument within the purview of the Commission under § 2101.1(a)(2), partial submissions should be made as appropriate to permit the Commission to advise on each aspect of the project starting with the selection of any artist to be employed.

(e) The Commission staff will advise owners and architects concerning the scope and content of particular submissions. Material relevant to the functions and policies of the Commission varies greatly depending upon the nature, size, and importance of the project to be reviewed by the Commission. Also, it is the policy of the Commission not to impose unnecessary burdens or delay on persons who make submissions to the Commission. However, the Commission at any meeting may decline to reach a conclusion about a proposed project if it deems the submission inadequate for its purposes, or it may condition its conclusions on the submission of further information to it at a later meeting or, in its discretion, to the staff of the Commission only.

(f) The Commission staff, members of the Georgetown Board, interested members of the public, or the submitting party may augment any submission by additional relevant information made available to the Commission before or at the meeting where the submission is considered. The Commission staff should also make available to the Commission at the meeting where a submission is considered information concerning prior considerations or conclusions of the Commission concerning the same project or earlier versions of it.

§ 2102.11 Scope and content of submissions for proposed medals, insignia, coins, seals, and the like.

Each submission of the design for a proposed item which is within the Commission's purview under § 2101.1(d) should identify the sponsoring government unit and disclosure the uses and purposes of the item, the size and forms in which it will be produced, and the materials and finishes to be used, including colors if any, along with a sketch, model, or prototype.

§ 2102.12 Responses of Commission to submissions.

(a) The Commission before disposing of any project presented to it may ask for the proposed plans or designs to be changed in certain particulars and resubmitted or for the opportunity to review plans, designs, specifications in certain particulars at a later stage in their development and to see samples or mock-ups of materials or components; and when appropriate in the matter of a statute or other object of art, the Commission may ask for the opportunity to see a larger or full-scale model. All conclusions, advice or comments of the Commission which lead to further development of plans, designs, and specifications or to actual carrying out of the project are made in contemplation that such steps will conform in all substantial respects with the plans or designs submitted to the Commission including only such changes as the Commission may have recommended; and any other changes in plans or designs require further submission to the Commission.

(b) In the case of plans for a project subject to the Old Georgetown Act (§ 2101.1(c)), if the Commission does not respond with a report on such plans within forty-five days after their submission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

PART 2103—STATEMENTS OF POLICY

§ 2103.1 General approaches to review of plans by the Commission.

The Commission functions relate to the appearance of proposed projects within its purview as they may be seen from public space. These functions are to serve the purpose of conserving and enhancing the visual assets which contribute significantly to the character and quality of Washington as the nation's capital and which meaningfully reflect the history and features of its development over nearly two centuries. Where existing conditions detract from the overall appearance of official Washington or historic Georgetown—such as conditions caused by temporary, deteriorated, or abandoned buildings of little or no historical or architectural value, by interrupted developments, or by vacant lots not devoted to public use as parks or squares—the Commission will favor suitable corrections to these conditions. When changes or additions are proposed in other circumstances, the Commission may consider whether the public need or value of the project or the private interests to be served thereby justify making any change or addition, and it will consider whether the project can be accomplished in reasonable harmony with the nearby area, with a minimum loss of attractive features of the existing building or site, with due deference to the historical and architectural values affected, and without creating an anomalous or disturbing element in the public view of the city.

(36 Stat. 371, 40 U.S.C. 104, as amended by 74 Stat. 128, 40 U.S.C. 106; Executive Order, (E.O. 1259 of Oct. 25, 1910; E.O. 1862 of Nov. 28, 1913; E.O. 3524 of July 28, 1921; 46 Stat. 366, 40 U.S.C. 121, as amended by 53 Stat. 1144, 40 U.S.C. 121; 64 Stat. 903, D.C. Code 5-801; 66 Stat. 781, 40 U.S.C. 72)

[44 FR 67053, Nov. 21, 1979]

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised semiannually (January 1 and July 1).

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	45 CFR
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Batterymarch Park, Quincy, MA 02269	
NFPA 101 Life Safety Code, 1978	1321.123(b); 1328.35(b)
Copies are available for inspection at Administration on Aging, Public Inquiries Room 4146, 330 Independence Ave., SW., Washington, DC 20201	

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Redesignation Table No. 1

At 42 FR 59212, November 15, 1977, regulations formerly appearing in 45 CFR Chapter IX, Administration on Aging were transferred to 45 CFR Chapter XIII, Office of Human Development.

The regulations added to Chapter XIII are redesignated as regulations in Subchapter C—Administration on Aging, Older Americans Programs of Chapter XIII.

For the convenience of the user the following table shows the relationship of the former Part numbers contained in Chapter IX to their new Part numbers reflected in Chapter XIII.

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Redesignation Table No. 2

At 45 FR 56683, Aug. 25, 1980, social services programs formerly in Parts 200-299 of Subchapter B—Program Regulations were redesignated in part and transferred to a new Subchapter J-Social Services for Individuals and Families under Titles I, IV-A, X,XIV, and XVI (AABD) of the Social Security Act and Subchapter K-Social Services for Individuals and Families under Title XX of the Social Security Act, and redesignated as Parts 1391 through 1397.

For the convenience of the user, the following table shows the relationship of the old CFR parts and section numbers to the new CFR parts and section numbers reflected in the new Parts 1391 through 1397.

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231	1392, Subpart E.

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List of CFR Sections Affected

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For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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1206	*Added	1996
1207	*Added	5770
1211	*Added	33519
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1350	*Added	11886
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*Chapter established		15485
1450	(Subchapter B) *Added	15485
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1501	*Revised	1593

NOTE: Asterisk (*) identifies changes published in 1974.

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1217	Added	44203
1218	Added	43725
1219	Added	42915
1220	Added	†28800
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1340	Added	43937
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1701.5 Revised	†7653
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1615 Added; eff. 10-12-76	Δ38508
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1369 Added	*15802
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